Commission Regulation (EC) No 1289/2008 of 12 December 2008 amending Commission Regulation (EC) No 809/2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards elements related to prospectuses and advertisements (Text with EEA relevance)

COMMISSION REGULATION (EC) No 1289/2008

of 12 December 2008

amending Commission Regulation (EC) No 809/2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards elements related to prospectuses and advertisements

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC[(1)], and in particular Article 7(1) thereof,

Whereas:

(1) Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards[(2)] requires companies governed by the law of a Member State, whose securities are admitted to trading on a regulated market in any Member State, to prepare their consolidated accounts in accordance with International Accounting Standards, now commonly referred to as International Financial Reporting Standards, adopted pursuant to Regulation (EC) No 1606/2002 (hereinafter referred to as adopted IFRS), for each financial year starting on or after 1 January 2005.

(2) Commission Regulation (EC) No 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements[(3)] requires third country issuers to prepare the historical financial information in prospectuses for offer of securities to the public or the admission of securities to trading on a regulated market in accordance with adopted IFRS or with the national accounting standards of a third country equivalent to these standards.

(3) In order to assess the equivalence of the Generally Accepted Accounting Principles (GAAP) of a third country with adopted IFRS, Commission Regulation (EC) No 1569/2007 of 21 December 2007 establishing a mechanism for the determination of equivalence of accounting standards applied by third country issuers of securities pursuant to Directives 2003/71/EC and 2004/109/EC of the European Parliament and of the Council[(4)] provides for the definition of equivalence and establishes a mechanism

Changes to legislation: *Commission Regulation (EC) No 1289/2008 is up to date with all changes known to be in force on or before 27 December 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

for the determination of equivalence of GAAP of a third country. Regulation (EC) No 1569/2007 also requires that the Commission decision permit Community issuers to use IFRS adopted pursuant to Regulation (EC) No 1606/2002 in the third country concerned.

(4) Financial statements drawn up in accordance with IFRS as issued by the International Accounting Standards Board (IASB) provide users of these statements with a sufficient level of information to enable them to make an informed assessment of the assets and liabilities, financial position, profit and losses and prospects of an issuer. Therefore, it is appropriate to allow third country issuers to use IFRS as issued by the IASB within the Community.

(5) In December 2007 the Commission consulted the Committee of European Securities Regulators (CESR) with regard to the technical assessment of the equivalence of the Generally Accepted Accounting Principles (GAAP) of the United States, China and Japan. In March 2008 the Commission extended the consultation with regard to the GAAPs of South Korea, Canada and India.

(6) In its advice delivered in March, May 2008 and in October 2008 respectively, CESR recommended finding US GAAP and Japanese GAAP equivalent to IFRS for use within the Community. Furthermore, CESR recommended the acceptance of financial statements using GAAPs of China, Canada, South Korea and India within the Community on a temporary basis, until no longer than 31 December 2011.

(7) In 2006 the United States' Financial Accounting Standards Board and the IASB concluded a Memorandum of Understanding which reaffirmed their objective of convergence between US GAAP and IFRS and outlined the work programme for this purpose. As a result of this work programme many major differences between US GAAP and IFRS have been resolved. In addition, following the dialogue between the Commission and the US Securities and Exchange Commission, reconciliation for Community issuers which prepare their financial statements in accordance with IFRS as issued by the IASB is no longer required. Therefore, it is appropriate to consider US GAAP equivalent to adopted IFRS from 1 January 2009.

(8) In August 2007 the Accounting Standards Board of Japan and the IASB announced their agreement to accelerate the convergence by eliminating major differences between Japanese GAAP and IFRS by 2008 and the remaining differences before the end of 2011. The Japanese authorities do not require any reconciliation for Community issuers which prepare their financial statements according to IFRS. Therefore, it is appropriate to consider Japanese GAAP equivalent to adopted IFRS from 1 January 2009.

(9) According to Article 4 of Regulation (EC) No 1569/2007 third country issuers may be permitted to use other third country GAAPs which are converging or committed to adopt IFRS or which have reached a mutual recognition agreement with the Community before 31 December 2008 for a transitional period ending no later than 31 December 2011.

(10) In China, the Accounting Standards for Business Enterprises are substantially converged with IFRS and cover nearly all topics under current IFRS. However, since

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the Accounting Standards for Business Enterprises are applied only from 2007, there is need for further evidence of their proper application.

(11) The Accounting Standards Board of Canada made a public commitment in January 2006 to adopt IFRS by 31 December 2011 and is taking effective measures to secure timely and complete transition to IFRS by that date.

(12) The Korean Financial Supervisory Commission and the Korean Accounting Institute made a public commitment in March 2007 to adopt IFRS by 31 December 2011 and are taking effective measures to secure timely and complete transition to IFRS by that date.

(13) The Indian Government and the Indian Institute of Chartered Accountants made a public commitment in July 2007 to adopt IFRS by 31 December 2011 and are taking effective measures to secure the timely and complete transition to IFRS by that date.

(14) Whilst no final decision on the equivalence of accounting standards converging to IFRS should be taken until an assessment of the implementation of those accounting standards by companies and auditors has been carried out, it is important to support the efforts of those countries which have undertaken to converge their accounting standards to IFRS and also of those countries which have undertaken to adopt IFRS. Accordingly, it is appropriate to allow third country issuers to prepare their annual and half-yearly financial statements in accordance with the GAAPs of China, Canada, South Korea or India in the Community for the transitional period of no more than three years. Consequently, Regulation (EC) No 809/2004 should be amended accordingly to reflect the changes concerning the use of GAAPs of the United States, Japan, China, Canada, South Korea and India to prepare the historical financial information by third country issuers and to delete some of its outdated provisions.

(15) The Commission should continue to monitor, with the technical assistance of CESR, the development of those third country GAAPs in relation to adopted IFRS.

(16) Countries should be encouraged to adopt IFRS. The EU may determine that the national standards which have been determined to be equivalent may no longer be used in preparing information required under the Directive 2004/109/EC or Regulation (EC) No 809/2004 implementing Directive 2003/71/EC when those respective countries have adopted IFRS as their sole accounting standard.

(17) The measures provided for in this Regulation are in accordance with the opinion of the European Securities Committee,

HAS ADOPTED THIS REGULATION:

Article 1

Article 35 of Regulation (EC) No 809/2004 is amended as follows:

1. Paragraphs 5 and 5a are replaced by the following:

5. From 1 January 2009, third country issuers shall present their historical financial information in accordance either with one of the following accounting standards: