I

(Legislative acts)

REGULATIONS

REGULATION (EU) 2019/2115 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 27 November 2019

amending Directive 2014/65/EU and Regulations (EU) No 596/2014 and (EU) 2017/1129 as regards the promotion of the use of SME growth markets

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee ([1]),

Acting in accordance with the ordinary legislative procedure ([2]),

Whereas:

(1) The Capital Markets Union initiative seeks to reduce dependence on bank lending, diversify market-based sources of financing for all small and medium-sized enterprises ('SMEs') and promote the issuance of bonds and shares by SMEs on public markets. Companies established in the Union that seek to raise capital on trading venues face high one-off and ongoing disclosure and compliance costs which can deter them from ever seeking admission to trading on Union trading venues. In addition, shares issued by SMEs on Union trading venues tend to suffer from lower levels of liquidity and higher volatility, thereby increasing the cost of capital and making that source of funding too onerous. A horizontal Union policy for SMEs in that regard is therefore essential. Such policy needs to be inclusive, coherent and effective, and take into account the variety of SMEs and their different needs.

(2) Directive 2014/65/EU of the European Parliament and of the Council ([3]) created a new type of trading venue, the SME growth market, a subcategory of multilateral trading facilities ('MTFs'), in order to facilitate access to capital for SMEs and enable them to grow, and also to facilitate the further development of specialist markets catering for the needs of SME issuers that have growth potential. Directive 2014/65/EU also anticipated that '[a]ttention 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'. In its opinion on the Commission proposal for this amending Regulation, the European Economic and Social Committee reiterated that the low level of communication and bureaucratic approaches are significant barriers and that much more effort must be put into overcoming those obstacles. In addition, it stated that the bottom of the chain, SMEs themselves, should be targeted by involving, among others, SME associations, social partners, and chambers of commerce.

([1]) OJ C 440, 6.12.2018, p. 79.

([2]) Position of the European Parliament of 18 April 2019 (not yet published in the Official Journal) and decision of the Council of 8 November 2019.

([3]) 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 (OJ L 173, 12.6.2014, p. 349).

(3) It has, however, been noted that issuers of financial instruments admitted to trading on an SME growth market benefit from relatively few regulatory alleviations compared to issuers of financial instruments admitted to trading on other MTFs or regulated markets. Most of the obligations set out in Regulation (EU) No 596/2014 of the European Parliament and of the Council ([4]) apply in the same manner to all issuers, irrespective of their size or the trading venue where their financial instruments are admitted to trading. That low level of differentiation between issuers of financial instruments admitted to trading on SME growth markets and those on other MTFs acts as a disincentive for MTFs to seek registration as an SME growth market, which is illustrated by the low uptake of the SME growth market status to date. It is therefore necessary to introduce additional proportionate alleviations to adequately foster the use of SME growth markets. The use of SME growth markets should be actively promoted. Many SMEs are still not aware of the existence of SME growth markets as a new type of trading venue.

(4) The attractiveness of SME growth markets should be reinforced by further reducing the compliance costs and administrative burdens faced by issuers of financial instruments admitted to trading on SME growth markets. To maintain the highest standards of compliance on regulated markets, the measures provided for in this Regulation should be limited to companies listed on SME growth markets, irrespective of the fact that not all SMEs are listed on SME growth markets and not all companies listed on SME growth markets are SMEs. Pursuant to Directive 2014/65/EU, up to 50 % of the issuers of financial instruments admitted to trading on SME growth markets can be non-SMEs, in order to maintain the profitability of the SME growth markets' business model through, inter alia, liquidity in non-SMEs securities. In view of the risks involved in applying different sets of rules to issuers listed on the same category of venue, namely SME growth markets, the measures provided for in this Regulation should not be limited only to SME issuers. For the sake of consistency for issuers and clarity for investors, the reduction in compliance costs and administrative burdens should apply to all issuers of financial instruments admitted to trading on SME growth markets, irrespective of their market capitalisation.

(5) The success of an SME growth market should not be measured simply by the number of companies listed thereon, but rather by the rate of growth achieved by those companies. There is a need for a sharper focus on SMEs — the ultimate beneficiaries of this Regulation — and their needs. Cutting red tape is a vital part of that process, but other steps also need to be taken. Efforts need to be made to improve the information that is directly available to SMEs about the financing options open to them, in order to foster their development. Regulatory alleviation should be for the benefit of smaller companies that have growth potential.

(6) According to Article 10(1) of Regulation (EU) No 596/2014, unlawful disclosure of inside information arises where a person possesses inside information and discloses that information to any other person, except where the disclosure is made in the normal exercise of an employment, a profession or duties. Pursuant to Article 11(4) of that Regulation, disclosure of inside information in the course of a market sounding is deemed to be made in the normal exercise of a person's employment, profession or duties, provided there is compliance with certain procedures established by the market sounding regime. A market sounding comprises the communication of information, prior to the announcement of a transaction, in order to gauge the interest of potential investors in a possible transaction and the conditions relating to it such as its potential size or pricing, to one or more potential investors. During the negotiation phase of an offer of securities to qualified investors (private placement), issuers enter into discussions with a limited number of potential qualified investors, as defined in Regulation (EU) 2017/1129 of the European Parliament and of the Council ([5]), and negotiate all the contractual terms and conditions of the transaction with those qualified investors.

The aim of the communication of information in that negotiation phase is to structure and complete the transaction as a whole, and not to gauge the interest of potential investors as regards a pre-defined transaction. The market sounding regime in respect of private placements of bonds can sometimes be burdensome and act as a disincentive to entering into discussions for such transactions for both issuers and investors. In order to increase the attraction

([4]) Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173, 12.6.2014, p. 1).

([5]) 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 (OJ L 168, 30.6.2017, p. 12).

of private placements of bonds, the disclosure of inside information to qualified investors for the purpose of such transactions should be deemed to be made in the normal exercise of a person's employment, profession or duties and should be excluded from the scope of the market sounding regime, provided that an adequate non-disclosure agreement is in place.

(7) Some liquidity in an issuer's shares can be achieved through liquidity mechanisms such as market-making arrangements or liquidity contracts. A market-making arrangement comprises a contract between the market operator and a third party who commits to maintaining the liquidity in certain shares and, in return, benefits from rebates on trading fees. A liquidity contract comprises a contract between an issuer and a third party who commits to providing liquidity in the shares of the issuer, and on its behalf. To ensure that market integrity is fully preserved, liquidity contracts should be available to all issuers of financial instruments admitted to trading on SME growth markets across the Union, subject to a number of conditions.

Not all competent authorities have established accepted market practices in accordance with Regulation (EU) No 596/2014 in relation to liquidity contracts, which means that not all issuers of financial instruments admitted to trading on SME growth markets currently have access to liquidity schemes across the Union. That absence of liquidity schemes can be an impediment to the effective development of SME growth markets. It is therefore necessary to create a Union framework that will enable issuers of financial instruments admitted to trading on SME growth markets to enter into a liquidity contract with a liquidity provider in the absence of an accepted market practice established at national level. Under such a Union framework, a person entering into a liquidity contract with a liquidity provider would not be deemed to be engaging in market manipulation. It is, however, essential that the proposed Union framework on liquidity contracts for SME growth markets does not replace, but rather complements, existing or future accepted national market practices. It is also essential that competent authorities retain the possibility of establishing accepted market practices in respect of liquidity contracts in order to tailor their conditions to local specificities or to extend such agreements to illiquid securities other than shares admitted to trading on trading venues.

(8) In order to ensure consistent harmonisation of the proposed Union framework for liquidity contracts, the Commission should adopt regulatory technical standards, setting out a template to be used for the purposes of such contracts, developed by the European Supervisory Authority (European Securities and Markets Authority) (ESMA), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council ([6]), by means of delegated acts pursuant to Article 290 of the Treaty on the Functioning of the European Union and in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

(9) According to Article 17(4) of Regulation (EU) No 596/2014, issuers can decide to delay disclosure of inside information to the public if issuers' legitimate interests are likely to be prejudiced, if the delay is not likely to mislead the public, and if issuers are able to ensure the confidentiality of the information. Issuers are, however, required to notify the competent authority thereof and to provide a written explanation of the rationale supporting the decision. That notification obligation, when imposed on issuers whose financial instruments are admitted to trading only on an SME growth market, can be burdensome. A lighter requirement for such issuers, whereby they are required to provide an explanation of the reasons for the delay only upon request by the competent authority, would reduce the administrative burden for issuers without having any significant impact on the ability of the competent authority to monitor the disclosure of inside information, provided that the competent authority is still notified of the decision to delay and is able to open an investigation if it has doubts as regards that decision.

(10) The current less stringent requirement for issuers whose financial instruments are admitted to trading on an SME growth market to produce, in accordance with Article 18(6) of Regulation (EU) No 596/2014, an insider list only upon the request of the competent authority is of limited practical effect because those issuers remain subject to requirements concerning ongoing monitoring of the persons who qualify as insiders in the context of ongoing projects. The existing requirement should therefore be replaced by the possibility for issuers whose financial instruments are admitted to trading on an SME growth market to maintain only a list of persons who, in the normal exercise of their duties, have regular access to inside information, such as directors, members of management bodies or in-house counsel. It would also be burdensome for issuers whose financial instruments are admitted to trading on an SME growth market to promptly update full insider lists in the manner provided for in Commission

([6]) Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

Implementing Regulation (EU) 2016/347 ([7]). However, since some Member States consider insider lists to be important for ensuring a higher level of market integrity, Member States should be given the option of introducing a requirement for issuers whose financial instruments are admitted to trading on an SME growth market to provide more extensive insider lists that include all persons who have access to inside information. Taking into account the need to ensure a proportionate administrative burden for SMEs, those more extensive lists should nevertheless represent a lighter administrative burden as compared to full insider lists.

(11) It is essential to clarify that the obligation of drawing up insider lists rests both with issuers and any person acting on their behalf or on their account. The responsibilities of any person acting on behalf or on account of an issuer with regard to the drawing up of insider lists should be clarified in order to avoid divergent interpretations and practices across the Union. The relevant provisions of Regulation (EU) No 596/2014 should be amended accordingly.

(12) Pursuant to Article 19(3) of Regulation (EU) No 596/2014, issuers and emission allowance market participants are required to make public information on transactions carried out by persons discharging managerial responsibilities ('PDMRs') and persons closely associated with them ('PCAs') within three business days after the transaction. The same deadline applies to PDMRs and PCAs as regards their duty to report their transactions to the issuer or to the emission allowance market participant. Where issuers or emission allowance market participants are notified late by PDMRs and PCAs of their transactions, it is technically challenging for those issuers or emission allowance market participants to comply with the three-day deadline, which may give rise to liability issues. Issuers and emission allowance market participants should therefore be allowed to disclose transactions within two business days of receipt of notification of those transactions by the PDMRs or the PCAs.

(13) Under Regulation (EU) 2017/1129, an issuer is, under certain conditions, not required to publish a prospectus in the case of securities offered in connection with a takeover by means of an exchange offer and in the case of securities offered, allotted or to be allotted in connection with a merger or division. Instead, a document containing minimum information describing the transaction and its impact on the issuer is to be made available to the public. There is no requirement under Union law for a national competent authority to review or approve such a document before its publication, and its content is lighter compared to a prospectus. An unintended consequence of such an exemption is that, in some circumstances, an unlisted company can carry out an initial admission of its shares to trading on a regulated market without producing a prospectus. That deprives investors of the useful information contained in a prospectus, while avoiding any review by a national competent authority of the information provided to the market. It is therefore appropriate to introduce a requirement to publish a prospectus for an unlisted company which seeks admission to trading on a regulated market following an exchange offer, a merger or a division.

(14) Article 14 of Regulation (EU) 2017/1129 does not currently allow the use of a simplified prospectus for issuers whose equity securities have been admitted to trading on either a regulated market or an SME growth market continuously for at least the last 18 months and that would seek to issue securities giving access to equity securities fungible with equity securities previously issued. Therefore, Article 14 of that Regulation should be amended to allow such issuers to use the simplified prospectus.

(15) SME growth markets should not be perceived as a final step in the scaling up of issuers and should enable successful companies to grow and move one day to regulated markets, in order to benefit from greater liquidity and a larger investors' pool. To facilitate the transition from an SME growth market to a regulated market, growing companies should be able to use the simplified disclosure regime set out in Article 14 of Regulation (EU) 2017/1129, for the admission to trading on a regulated market of securities fungible with securities which have been previously issued, provided that those companies have offered securities to the public that have been continuously admitted to trading on an SME growth market for at least two years and have fully complied with reporting and disclosure obligations throughout that period. A two-year period should enable issuers to have a sufficient track record and to provide the market with information on their financial performance and reporting requirements under Directive 2014/65/EU.

([7]) Commission Implementing Regulation (EU) 2016/347 of 10 March 2016 laying down implementing technical standards with regard to the precise format of insider lists and for updating insider lists in accordance with Regulation (EU) No 596/2014 of the European Parliament and of the Council (OJ L 65, 11.3.2016, p. 49).

(16) Regulation (EC) No 1606/2002 of the European Parliament and of the Council ([8]) does not require issuers of financial instruments admitted to trading on SME growth markets to publish their financial statements in conformity with International Financial Reporting Standards. However, in order to avoid diverging from regulated market standards, issuers of financial instruments admitted to trading on SME growth markets that wish to use the simplified disclosure regime set out in Article 14 of Regulation (EU) 2017/1129 for the admission of their securities to trading on a regulated market should nevertheless prepare their most recent financial statements in accordance with Regulation (EC) No 1606/2002, including comparative information for the previous year, provided that they would be required to prepare consolidated accounts as a result of the application of Directive 2013/34/EU of the European Parliament and of the Council ([9]) after the admission of their financial instruments to trading on a regulated market. Where the application of that Directive would not require issuers to prepare such accounts, they should comply with the national law of the Member State in which they are incorporated.

(17) The purpose of this Regulation is consistent with the objectives of the EU Growth prospectus, as set out in Article 15 of Regulation (EU) 2017/1129. The EU Growth prospectus is short and therefore economical to produce, reducing costs for SMEs. SMEs should be able to choose to use the EU Growth prospectus. The current definition of SMEs in Regulation (EU) 2017/1129 can be too restrictive, in particular for those issuers seeking admission to trading on an SME growth market that tend to be larger than traditional SMEs. As a result, as regards public offers, immediately followed by an initial admission to trading on an SME growth market, smaller issuers would not be able to use the EU Growth prospectus, even if their market capitalisation after their initial admission to trading were lower than EUR 200 000 000. Therefore, Regulation (EU) 2017/1129 should be amended to allow issuers seeking an initial public offer with a tentative market capitalisation below EUR 200 000 000 to draw up an EU Growth prospectus.

(18) Given the importance of SMEs for the functioning of the Union's economy, special attention should be paid to the impact of Union law relating to financial services on the financing of SMEs. To that end, the Commission should, when undertaking the review of legal acts affecting the financing of listed and unlisted SMEs, analyse regulatory and administrative barriers, including in relation to research, that limit or prevent investment in SMEs. In doing so, the Commission should assess the evolution of capital flows to SMEs and strive to create a favourable regulatory environment to foster the financing of SMEs.

(19) Directive 2014/65/EU and Regulations (EU) No 596/2014 and (EU) 2017/1129 should therefore be amended accordingly.

(20) This Regulation should apply from 31 December 2019. However, Article 1 should apply from 1 January 2021,

HAVE ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EU) No 596/2014

Regulation (EU) No 596/2014 is amended as follows:

(1) in Article 11, the following paragraph is inserted:

'1a. Where an offer of securities is addressed solely to qualified investors as defined in point (e) of Article 2 of Regulation (EU) 2017/1129 of the European Parliament and of the Council (*), communication of information to those qualified investors for the purposes of negotiating the contractual terms and conditions of their participation in an issuance of bonds by an issuer that has financial instruments admitted to trading on a trading venue, or by any person acting on its behalf or on its account, shall not constitute a market sounding. Such communication shall be deemed to be made in the normal exercise of a person's employment, profession or duties as provided for in Article 10(1) of this Regulation, and therefore shall not constitute unlawful disclosure of inside information. That issuer or any person acting on its behalf or on its account shall ensure that the qualified investors receiving the information are

([8]) Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards (OJ L 243, 11.9.2002, p. 1).

([9]) Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

aware of, and acknowledge in writing, the legal and regulatory duties entailed and are aware of the sanctions applicable to insider dealing and unlawful disclosure of inside information.

(*) 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 (OJ L 168, 30.6.2017, p. 12).';

(2) in Article 13, the following paragraphs are added:

'12. Without prejudice to accepted market practices as established in accordance with paragraphs 1 to 11 of this Article, an issuer of financial instruments admitted to trading on an SME growth market may enter into a liquidity contract for its shares where all of the following conditions are met:

(a) the terms and conditions of the liquidity contract comply with the criteria set out in paragraph 2 of this Article and in Commission Delegated Regulation (EU) 2016/908 (*);

(b) the liquidity contract is drawn up in accordance with the Union template referred to in paragraph 13 of this Article;

(c) the liquidity provider is duly authorised by the competent authority in accordance with Directive 2014/65/EU and is registered as a market member with the market operator or the investment firm operating the SME growth market;

(d) the market operator or the investment firm operating the SME growth market acknowledges in writing to the issuer that it has received a copy of the liquidity contract and agrees to that contract's terms and conditions.

The issuer referred to in the first subparagraph of this paragraph shall be able to demonstrate at any time that the conditions under which the contract was concluded are met on an ongoing basis. That issuer and the market operator or the investment firm operating the SME growth market shall provide the relevant competent authorities with a copy of the liquidity contract upon their request.

13. ESMA shall develop draft regulatory technical standards to draw up a contractual template to be used for the purposes of entering into a liquidity contract in accordance with paragraph 12, in order to ensure compliance with the criteria set out in paragraph 2, including as regards transparency to the market and performance of the liquidity provision.

ESMA shall submit those draft regulatory technical standards to the Commission by 1 September 2020.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

(*) Commission Delegated Regulation (EU) 2016/908 of 26 February 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council laying down regulatory technical standards on the criteria, the procedure and the requirements for establishing an accepted market practice and the requirements for maintaining it, terminating it or modifying the conditions for its acceptance (OJ L 153, 10.6.2016, p. 3).';

(3) in Article 17(4), the following subparagraph is added:

'By way of derogation from the third subparagraph of this paragraph, an issuer whose financial instruments are admitted to trading only on an SME growth market shall provide a written explanation to the competent authority specified under paragraph 3 only upon request. As long as the issuer is able to justify its decision to delay, the issuer shall not be required to keep a record of that explanation.';

(4) Article 18 is amended as follows:

(a) paragraphs 1 and 2 are replaced by the following:

'1. Issuers and any person acting on their behalf or on their account, shall each:

(a) draw up a list of all persons who have access to inside information and who are working for them under a contract of employment, or otherwise performing tasks through which they have access to inside information, such as advisers, accountants or credit rating agencies (insider list);

(b) promptly update the insider list in accordance with paragraph 4; and

(c) provide the insider list to the competent authority as soon as possible upon its request.

2. Issuers and any person acting on their behalf or on their account, shall take all reasonable steps to ensure that any person on the insider list acknowledges in writing the legal and regulatory duties entailed and is aware of the sanctions applicable to insider dealing and unlawful disclosure of inside information.

Where another person is requested by the issuer to draw up and update the issuer's insider list, the issuer shall remain fully responsible for complying with this Article. The issuer shall always retain a right of access to the insider list that the other person is drawing up.';

(b) paragraphs 4, 5 and 6 are replaced by the following:

'4. Issuers and any person acting on their behalf or on their account shall each update their insider list promptly, including the date of the update, in the following circumstances:

(a) where there is a change in the reason for including a person already on the insider list;

(b) where there is a new person who has access to inside information and needs, therefore, to be added to the insider list; and

(c) where a person ceases to have access to inside information.

Each update shall specify the date and time when the change triggering the update occurred.

5. Issuers and any person acting on their behalf or on their account shall each retain their insider list for a period of at least five years after it is drawn up or updated.

6. Issuers whose financial instruments are admitted to trading on an SME growth market shall be entitled to include in their insider lists only those persons who, due to the nature of their function or position within the issuer, have regular access to inside information.

By way of derogation from the first subparagraph of this paragraph and where justified by specific national market integrity concerns, Member States may require issuers whose financial instruments are admitted to trading on an SME growth market to include in their insider lists all persons referred to in point (a) of paragraph 1. Those lists shall comprise information specified in the format determined by ESMA pursuant to the fourth subparagraph of this paragraph.

The insider lists referred to in the first and second subparagraphs of this paragraph shall be provided to the competent authority as soon as possible upon its request.

ESMA shall develop draft implementing technical standards to determine the precise format of the insider lists referred to in the second subparagraph of this paragraph. The format of the insider lists shall be proportionate and represent a lighter administrative burden compared to the format of insider lists referred to in paragraph 9.

ESMA shall submit those draft implementing technical standards to the Commission by 1 September 2020.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the fourth subparagraph of this paragraph in accordance with Article 15 of Regulation (EU) No 1095/2010.';

(5) in Article 19(3), the first subparagraph is replaced by the following:

'3. The issuer or emission allowance market participant shall make public the information contained in a notification referred to in paragraph 1 within two business days of receipt of such a notification.';

(6) Article 35(2) is replaced by the following:

'2. The power to adopt delegated acts referred to in Article 6(5) and (6), Article 12(5), the third subparagraph of Article 17(2), Article 17(3), Article 19(13) and (14), and Article 38 shall be conferred on the Commission for a period of five years from 31 December 2019. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.'.

Article 2

Amendments to Regulation (EU) 2017/1129

Regulation (EU) 2017/1129 is amended as follows:

(1) in Article 1, the following paragraphs are inserted:

'6a. The exemptions set out in point (f) of paragraph 4 and in point (e) of paragraph 5 shall only apply to equity securities, and only in the following cases:

(a) the equity securities offered are fungible with existing securities already admitted to trading on a regulated market prior to the takeover and its related transaction, and the takeover is not considered to be a reverse acquisition transaction within the meaning of paragraph B19 of international financial reporting standard (IFRS) 3, Business Combinations, adopted by Commission Regulation (EC) No 1126/2008 (*); or

(b) the supervisory authority that has the competence, where applicable, to review the offer document under Directive 2004/25/EC of the European Parliament and of the Council (**) has issued a prior approval of the document referred to in point (f) of paragraph 4 or point (e) of paragraph 5 of this Article.

6b. The exemptions set out in point (g) of paragraph 4 and in point (f) of paragraph 5 shall apply only to equity securities in respect of which the transaction is not considered to be a reverse acquisition transaction within the meaning of paragraph B19 of IFRS 3, Business Combinations, and only in the following cases:

(a) the equity securities of the acquiring entity have already been admitted to trading on a regulated market prior to the transaction; or

(b) the equity securities of the entities subject to the division have already been admitted to trading on a regulated market prior to the transaction.

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(*) Commission Regulation (EC) No 1126/2008 of 3 November 2008 adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council (OJ L 320, 29.11.2008, p. 1).

(**) Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids (OJ L 142, 30.4.2004, p. 12).';

(2) Article 14 is amended as follows:

(a) the first subparagraph of paragraph 1 is amended as follows:

(i) point (b) is replaced by the following:

'(b) without prejudice to Article 1(5), issuers whose equity securities have been admitted to trading on a regulated market or an SME growth market continuously for at least the last 18 months and who issue non-equity securities or securities giving access to equity securities fungible with the existing equity securities of the issuer already admitted to trading;';

(ii) the following point is added:

'(d) issuers whose securities have been offered to the public and admitted to trading on an SME growth market continuously for at least two years, and who have fully complied with reporting and disclosure obligations throughout the period of being admitted to trading, and who seek admission to trading on a regulated market of securities fungible with existing securities which have been previously issued.';

(b) paragraph 2 is amended as follows:

(i) in the second subparagraph, the following sentence is added:

'Those issuers referred to in point (d) of the first subparagraph of paragraph 1 of this Article that are required to prepare consolidated accounts in line with Directive 2013/34/EU of the European Parliament and of the Council (*) after their securities' admission to trading on a regulated market shall compile the most recent financial information pursuant to point (a) of the second subparagraph of paragraph 3 of this Article, containing comparative information for the previous year included in the simplified prospectus, in accordance with the International Financial Reporting Standards referred to in Regulation (EC) No 1606/2002 of the European Parliament and of the Council (**).

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(*) Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

(**) Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards (OJ L 243, 11.9.2002, p. 1).';

(ii) the following subparagraphs are added:

'Those issuers referred to in point (d) of the first subparagraph of paragraph 1 of this Article that are not required to prepare consolidated accounts in line with Directive 2013/34/EU after their securities' admission to trading on a regulated market shall compile the most recent financial information pursuant to point (a) of the second subparagraph of paragraph 3 of this Article, containing comparative information for the previous year included in the simplified prospectus, in accordance with the national law of the Member State in which the issuer is incorporated.

Third country issuers whose securities have been admitted to trading on an SME growth market shall compile the most recent financial information pursuant to point (a) of the second subparagraph of paragraph 3 of this Article, containing comparative information for the previous year included in the simplified prospectus, in accordance with their national accounting standards, provided that those standards are equivalent to Regulation (EC) No 1606/2002. If those national accounting standards are not equivalent to the International Financial Reporting Standards, the financial information shall be restated pursuant to Regulation (EC) No 1606/2002.';

(c) point (e) of the second subparagraph of paragraph 3 is replaced by the following:

'(e) for equity securities, including securities giving access to equity securities, the working capital statement, the statement of capitalisation and indebtedness, a disclosure of relevant conflicts of interest and related-party transactions, major shareholders and, where applicable, *pro forma* financial information.';

(3) in the first subparagraph of Article 15(1), the following point is inserted:

'(ca) issuers, other than SMEs, offering shares to the public at the same time as seeking admission of those shares to trading on an SME growth market, provided that such issuers have no shares already admitted to trading on an SME growth market and the combined value of the following two items is less than EUR 200 000 000:

(i) the final offer price, or the maximum price in the case referred to in point (b)(i) of Article 17(1);

(ii) the total number of shares outstanding immediately after the share offer to the public, calculated either on the basis of the amount of shares offered to the public or, in the case referred to in point (b)(i) of Article 17(1), on the basis of the maximum amount of shares offered to the public.';

(4) in Annex V, point II is replaced by the following:

'II. Statement of capitalisation and indebtedness (only for equity securities issued by companies with market capitalisation above EUR 200 000 000) and working capital statement (only for equity securities).

The purpose is to provide information on the issuer's capitalisation and indebtedness and information as to whether the working capital is sufficient to meet the issuer's present requirements or, if not, how the issuer proposes to provide the additional working capital needed.'.

Article 3

Amendment to Directive 2014/65/EU

In Article 33 of Directive 2014/65/EU, the following paragraph is added:

'9. The Commission shall set up an expert stakeholder group by 1 July 2020 to monitor the functioning and success of SME growth markets. By 1 July 2021, the expert stakeholder group shall publish a report on its conclusions.'.

Article 4

Entry into force and application

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

It shall apply from 31 December 2019. However, Article 1 shall apply from 1 January 2021.

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

Done at Strasbourg, 27 November 2019.

For the European Parliament	*For the Council*
The President	*The President*
D. M. SASSOLI	T. TUPPURAINEN