European Parliament
2014-2019

Committee on Economic and Monetary Affairs

20.3.2019

PROVISIONAL AGREEMENT RESULTING FROM INTERINSTITUTIONAL NEGOTIATIONS

Subject: Proposal for a regulation of the European Parliament and of the Council amending Regulations (EU) No 596/2014 and (EU) 2017/1129 as regards the promotion of the use of SME growth markets
(COM(2018)0331 – C8-0212/2018 – 2018/0165(COD))

The interinstitutional negotiations on the aforementioned proposal for a regulation have led to a compromise. In accordance with Rule 69f(4) of the Rules of Procedure, the provisional agreement, reproduced below, is submitted as a whole to the Committee on Economic and Monetary Affairs for decision by way of a single vote.

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

of

amending 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 aims at reducing dependence on bank lending, at diversifying market-based sources of financing for all smaller and medium-sized enterprises ('SMEs') and at promoting the issuance of bonds 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. A horizontal Union policy for SMEs is therefore essential. Such policy needs to be inclusive, coherent and effective, and must take into account the various subgroups of SMEs and their different needs.

(2) Directive 2014/65/EU of the European Parliament and of the Council[3] 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 enable them to grow, and to facilitate the further development of specialist markets that aim to cater for the needs of SME issuers that have growth potential. 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

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1 OJ C 440, 6.12.2018, p. 79.

2 Position of the European Parliament of … (OJ …) and decision of the Council of …

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).

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 Regulation the European Economic and Social Committee insisted that low level of communication and bureaucratic approaches are significant barriers and much more effort must be put into overcoming these obstacles. In addition, it stated that the bottom of the chain should be targeted by involving SME associations, social partners, and chambers of commerce.

(3) It has however been noted that issuers admitted to trading on an SME growth market benefit from relatively few regulatory alleviations compared to issuers admitted to trading on MTFs or regulated markets. Most of the obligations set out in Regulation (EU) No 596/2014 European Parliament and of the Council 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 SME growth markets and MTF issuers acts as a disincentive for MTFs to seek a 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.

(4) The attractiveness of SME growth markets should be reinforced by further reducing the compliance costs and administrative burdens faced by SME growth market issuers. To maintain the highest standards of compliance on regulated markets, the alleviations 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 non-SMEs can be admitted to trading on SME growth markets 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 changes set out in this Regulation should not be limited to SME issuers only. For the sake of consistency for issuers and clarity for investors, the alleviation of compliance costs and administrative burdens should apply to all issuers on SME growth markets, irrespective of their market capitalisation. 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.

(4a) The success of an SME growth market should not be measured simply by the number of companies listed, but rather by the rate of growth achieved by the listed companies. Regulatory alleviation should be for the benefit of those smaller companies that have growth potential.

(5) According to Article 11 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), disclosure of inside information in the course of market sounding shall be deemed to be made in the normal exercise of a person's employment, profession or duties, provided certain procedures established by the market sounding framework are

complied with. 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 a private placement of bonds, issuers enter into discussions with a limited set of potential qualified investors (as defined in Regulation (EU) 2017/1129 of the European Parliament and of the Council[4]) and negotiate all the contractual terms and conditions of the transaction with those qualified investors. The communication of information in that negotiation phase of a private placement of bonds aims at structuring and completing the entire transaction, and not at gauging the interest of potential investors as regards a pre-defined transaction. Imposing market sounding on private placements of bonds can sometimes be burdensome and act as a disincentive to enter into discussions for such transactions for both issuers and investors. In order to increase the attraction of private placement of bonds, the disclosure of inside information to qualified investors for those 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.

(6) 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 involves a contract between the market operator and a third party who commits to maintaining the liquidity in certain shares and benefits from rebates on trading fees in return. A liquidity contract involves 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 for all SME growth markets issuers across the Union, subject to a number of conditions. Not all competent authorities have, pursuant to Article 13 of Regulation (EU) No 596/2014, established accepted market practices in relation to liquidity contracts , which means that not all SME growth market issuers have currently 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 SME growth market issuers to enter into a liquidity contract with a liquidity provider in another Member State in the absence of an accepted market practice established at national level. Under this EU framework, a person entering into such a liquidity contract with a liquidity provider would therefore not be deemed to engage in market manipulation. It is, however, essential that the Union framework on liquidity contracts for SME growth markets should not replace, but rather complement, existing or future accepted national market practices. It is essential that competent authorities should keep the possibility to establish accepted market practices on liquidity contracts to tailor their conditions to local specificities or to extend such agreements to illiquid securities other than trading venues shares.

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[4] Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14June 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.

(7) In order to ensure a uniform application of the Union framework for liquidity contracts referred to in recital 6, Regulation (EU) No 596/2014 should be amended to empower the Commission to adopt implementing technical standards developed by the European Securities and Markets Authority, setting out a template to be used for the purposes of such contracts. The Commission should adopt those implementing technical standards by means of implementing acts pursuant to Article 291 of the Treaty and in accordance with Article 15 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[5].

(7a) The use of SME growth markets should be actively promoted. Many SMEs are still not aware of their existence as a new category trading venue.

(8) According to Article 17(4) of Regulation (EU) No 596/2014, issuers can decide to delay the public disclosure of inside information if their legitimate interests are likely to be prejudiced. Issuers are however required to notify the competent authority thereof and to provide an explanation of the rationale supporting the decision. The obligation for issuers, who have their financial instruments admitted to trading only on an SME growth market to document in writing the reasons why they have decided to delay the disclosure can be burdensome. It is considered that a lighter requirement for issuers who have their financial instruments admitted to trading only on an SME growth market consisting in an obligation to only explain the reasons for the delay upon request by the competent authority would have no significant impact on the ability of the competent authority to monitor the disclosure of inside information, while reducing the administrative burden for SME growth markets issuers, provided that competent authorities are still notified of the decision to delay and are in a position to open an investigation if they have doubt as regards that decision.

(9) The current less stringent requirements for SME growth markets issuers 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 are still subject to ongoing monitoring of the persons who qualify as insiders in the context of ongoing projects. The existing alleviation should therefore be replaced by the possibility for SME growth markets issuers 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 counsels. It would be burdensome for SME growth market issuers to promptly update the full insider list set out in the Commission Implementing Regulation (EU) 2016/347. However, since some Member States deem insider lists to be an important element for ensuring a higher level of market integrity, Member States should be provided with the option to introduce a requirement for the SME Growth Market issuers to provide more extensive insider lists that include all persons who have access to inside information. Nevertheless, taking into account the need to ensure a proportionate administrative burden for SMEs, these lists should contain an alleviated amount of information as compared to full insider lists.

(9a) It is essential to clarify that the obligation to establish insider lists rests with both

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[5] 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).

issuers and persons acting on their behalf or on their account. The responsibilities of persons acting on behalf or on account of the issuer with regard to the establishment 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.

(10) Pursuant to Article 19(3) of Regulation (EU) No 596/2014, issuers have to make public transactions carried out by persons discharging managerial responsibilities ('PDMRs') and persons closely associated with them ('PCAs') within three days after the transaction. The same deadline applies to PDMRs and PCAs as regards their duty to report their transactions to the issuer. Where issuers and emission allowance market participants are notified late by PDMRs and PCAs of their transactions, it is technically challenging for those issuers and 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 days after those transactions have been notified by the PDMRs or the PCAs.

(10a) Article 1(4) (for offers of securities to the public) and 1(5) of Regulation (EU) 2017/1129 of the European Parliament and of the Council allow an issuer, under certain conditions, not to draft a prospectus, in case of an exchange offer, merger or division. Instead, a document containing minimum information describing the transaction and its impact on the issuer must be made available to the market. Such document is neither reviewed, nor approved by a national competent authority and its content should be alleviated compared to a prospectus. An unintended consequence of such exemption is that, in some circumstances, a non-listed issuer company can carry out an initial admission of its shares to trading without producing a prospectus, thus depriving 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 draft a prospectus for a non-listed issuer which seeks admission to trading following exchange offer, merger or division.

(10b) Article 14 of Regulation (EU) 2017/1129 of the European Parliament and of the Council 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 should be amended to allow issuers to use the simplified prospectus.

(11) 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 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 as set out in Article 14 of Regulation (EU) 2017/1129 of the European Parliament and of the Council, for the admission 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 over the full period of having been listed. That 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 the rules of Directive 2014/65/EU.

(12) According to Regulation (EC) No 1606/2002 of the European Parliament and of the Council[6], SME growth market issuers are not obliged to publish their financial statements in International Financial Reporting Standards. However, to avoid departing from regulated market standards, SME growth markets issuers that would want to use the simplified disclosure regime for a transfer to a regulated market should prepare their most recent financial statements, including comparative information for the previous year in accordance with that Regulation, provided they would be required to prepare consolidated accounts. SME growth market issuers that would not have to prepare consolidated accounts should comply with the national law of the Members State in which the company is incorporated.

(12a) The purpose of this Regulation is fully consistent with the objectives of the EU growth prospectus, as set out in Article 15 of Regulation (EU) 2017/1129 of the European Parliament and of the Council. 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 definitions of SMEs in Regulation (EU) 2017/1129 of the European Parliament and of the Council can be too restrictive, in particular for 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 firms would not be able to use the EU Growth prospectus, even if their market capitalisation after their initial admission to trading is lower than EUR 200 million. As a consequence, Article 15 of the Regulation (EU) 2017/1129 of the European Parliament and of the Council should be amended to allow firms seeking an initial public offer with a tentative market capitalisation of below EUR 200 million to draw up an EU Growth Prospectus.

(12b) Given the importance of SMEs for the functioning of the Union's economy, special attention should be given to the impact of financial services legislation of the Union on the financing of SMEs. To give effect to that importance, the Commission should, when undertaking the review of all legislation affecting the financing of listed and unlisted AMEs, analyse regulatory and administrative barriers, including on 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.

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

(14) The amendments set out in this Regulation should apply from the date of entry into force of this Regulation. However, Article 1 applies from 12 months after entry into force,

HAVE ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EU) No 596/2014

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

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[6] 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).

1. in Article 11, the following paragraph 1a is inserted:

"1a. Where an offer of securities is addressed solely to qualified investors as defined in Article 2(e) 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 a third party acting on its behalf or account, shall not constitute a market sounding. This communication shall be deemed to be made in the normal exercise of a person's employment, profession or duties pursuant to Article 10 (1), and therefore shall not constitute unlawful disclosure of inside information. That issuer shall ensure that the qualified investors receiving the information are 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.

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* 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 12 and 13 are inserted:

"12. Without prejudice to national accepted market practices established in accordance with paragraphs 1 to 11, an issuer whose financial instruments are admitted to trading on an SME growth market is authorised to enter into a liquidity contract for its shares, using a Union template to be developed by the European Securities and Markets Authority in accordance with paragraph 13, where all of the following conditions are met:

(a) the terms and conditions of the liquidity contract comply with the criteria set out in Article 13(2) of this Regulation and in Commission Delegated Regulation (EU) 2016/908**;

(b) the liquidity contract is established in accordance with the template as referred to in the paragraph 13;

(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 established are met on an ongoing basis. That issuer and 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 determine a contractual template referred to in paragraph 12 to be used for the purposes of

entering into a liquidity contract to ensure compliance with the conditions set out in paragraph 2, including as regards the transparency and performance of the liquidity provision.
ESMA shall submit those draft regulatory technical standards to the Commission by ... [8 months after the date of entry into force of this Regulation].
Power is delegated to the Commission to adopt regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in 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, the issuer whose financial instruments are only admitted to trading on an SME growth market, shall provide a written explanation to the competent authority only upon request. As long as the issuer is able to justify its decision to delay, it shall not be required to keep a record of that explanation.";

4. in Article 18, paragraphs 1 to 6 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 remains 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.
3. The insider list shall include at least:
(a) the identity of any person having access to inside information;
(b) the reason for including that person in the insider list;
(c) the date and time at which that person obtained access to inside information; and
(d) the date on which the insider list was drawn up.

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 authorised to include in their lists of insiders 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 and where justified by specific national market integrity concerns, MS may request issuers whose financial instruments are admitted to trading on an SME growth market to use lists of all insiders as defined under point a of paragraph 1, containing information specified in the format developed by ESMA, pursuant to the third subparagraph.

ESMA shall develop draft implementing technical standards to determine the precise format of insider lists as referred to in the second paragraph by developing implementing technical standards. The format of the insider lists shall be proportionate and alleviated as compared to the format of insider lists referred to in paragraph 9 of this Article.

ESMA shall submit those draft implementing technical standards to the Commission by [8 months after the date of entry into force]. Power is conferred on the Commission to adopt the implementing technical standards referred to in the third subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

That list shall be provided to the competent authority as soon as possible upon its request.";

5. in Article 19(3), the first subparagraph is replaced by the following :
"The issuer or emission allowance market participant shall have two business days after receipt of a notification as referred to in paragraph 1 to make public the information contained in that notification.";

5a. 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), and Article 19(13) and (14) shall be conferred on the Commission for a period of five years from … [date of entry into force of the amending act]. 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 points 6a and 6b are added:

"6a. The exemptions set out in point (f) of paragraph 4 and in point (e) of paragraph 5 shall only apply with respect to equity securities where:

(a) the equity securities offered have already been admitted to trading on a regulated market prior to the takeover and transaction, and the takeover is not considered to be a reverse acquisition transaction within the meaning of paragraph B19 of IFRS 3, Business Combinations as endorsed by the European Union, or

(b) the authority that has the competence to review the offer document under directive 2004/25 EC has issued a prior approval of the document referred to in point (f) of paragraph 4 or point (e) of paragraph 5.

6b. The exemptions set out in point (g) of paragraph 4 and in point (f) of paragraph 5 shall apply only with respect to equity securities in the following cases:

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

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

(c) the merger does not qualify as 'reverse acquisition transaction' as defined in paragraph B19 of IFRS 3, Business Combinations as endorsed by the European Union.";

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 d 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 have fully complied with reporting and disclosure obligations over the full period of being admitted to trading, and which seek admission to trading on a regulated market of securities fungible with securities which have been previously issued.";

(b) paragraph 2 is amended as follows:

(i) in the second subparagraph, the following sentence is added:
"For issuers as referred to in point (d) of the first subparagraph of paragraph 1, whose securities have been admitted to trading on an SME growth market and which will be required to prepare consolidated accounts according to Directive 2013/34/EU after their securities' admission to trading on a regulated market, the most recent financial statements pursuant to Article 14(3)(a), containing comparative information for the previous year included in the simplified prospectus, shall be prepared in accordance with the International Financial Reporting Standards as endorsed in the Union pursuant to Regulation (EC) No 1606/2002***.

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*** 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:
"For issuers as referred to in point (d) of the first subparagraph of paragraph 1 whose securities have been admitted to trading on an SME growth market and which will not be required to prepare consolidated accounts according to Directive 2013/34/EU after their securities' admission to trading on a regulated market, the most recent financial statements pursuant to Article 14(3)(a), containing comparative information for the previous year included in the simplified prospectus, shall be prepared in accordance with the national law of the Member State in which the company is incorporated.

For third country issuers whose securities have been admitted to trading on an SME Growth Market, the most recent financial statements pursuant to Article 14(3)(a), containing comparative information for the previous year included in the simplified prospectus, shall be prepared in accordance with the third country's national accounting standard equivalent to Regulation (EC) No 1606/2002. If such third country's national accounting standards are not equivalent to IFRS the financial statements shall be restated pursuant to Regulation (EC) No 1606/2002.";

(c) point (e) of the second subparagraph of paragraph 3 is amended as follows:
"(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 the admission of those shares to an SME growth market, provided they have no shares already admitted to trading on an SME growth market and the product of the following two components 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 amount of shares offered to the public or on the maximum amount of shares offered to the public, in the case referred to in point (b)(i) of Article 17(1).";

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 2a
Amendments 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 [6 months after entry into force of Regulation] to monitor the success and functioning of SME growth markets. By [18 months after entry into force of Regulation], the stakeholder group shall publish a report on its conclusions."

Article 3
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 ... [date of entry into force]. However, Article 1 applies from [12 months after entry into force.]

This Regulation shall be binding in its entirety and directly applicable in all Member States.
Done at Brussels,

For the European Parliament
The President

For the Council
The President