

## **Prospectus Regulation: Expiry of facilitations at the end of 31 December 2022 in relation to (i) information requirements for financial intermediaries regarding supplements and (ii) continuous issues; and new proposal for the amendment of the Prospectus Regulation published**

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The measures adopted by the European Commission to address the recovery of capital markets in the wake of the COVID-19 pandemic, which entered into force on 18 March 2021, expire on 31 December 2022. The European Commission has published a new proposal to amend the Prospectus Regulation (the "European Commission Proposal") on 7 December 2022. The measures of Regulation (EU) 2021/337 (the "PR Amendment Regulation"), which entered into force on 18 March 2021, made temporary amendments to Regulation (EU) 2017/1129 (the "Prospectus Regulation"), and enabled issuers and financial intermediaries to reduce their costs and free up resources for the economic recovery phase immediately following the COVID-19 pandemic.

The European Commission Proposal provides, according to the current status, that the provisions of the PR Amendment Regulation will be continued at a point in time not yet defined and, in addition, further amendments to the Prospectus Regulation will be made. We will provide information on relevant changes to the European Commission Proposal again in the future.

The expiry of the provisions of the PR Amendment Regulation will have the following effects:

### **Information requirements for financial intermediaries in the case of supplements and shortening of the withdrawal period for investors**

As of 31 December 2022, the applicability of the provisions supplemented in Article 23 of the Prospectus Regulation by the PR Amendment Regulation regarding the withdrawal period (paragraph 2a) and the abstract and concrete information requirement (paragraph 3a) will expire, as a result of which the predecessor provisions paragraphs (2) and (3) will again be applicable as of 1 January 2023.

#### **Abstract information requirement**

According to Article 23 (3) of the Prospectus Regulation, the scope of the abstract information requirement must be separated into two scenarios:

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### 1. "Only financial intermediary"

Where the securities are purchased or subscribed through a financial intermediary, that financial intermediary shall inform investors of the possibility of a supplement being published, where and when it would be published and that the financial intermediary would assist them in exercising their right to withdraw acceptances in such case.

### 2. "Issuer, that is also a financial intermediary"

Where the securities are purchased or subscribed directly from the issuer, the issuer shall inform investors of the possibility of a supplement being published and where it would be published and that in such case, they could have a right to withdraw the acceptance.

### Concrete information requirement

In the event of a subsequent actual publication of a supplement, the financial intermediary through which securities were indirectly purchased or subscribed or the issuer, which is also a financial intermediary itself and through which securities were directly purchased or subscribed, must inform investors about the supplement on the day when this supplement is published.

### Withdrawal period

In addition, due to the expiry of paragraph (2a), the period, during which those investors entitled to a right of withdrawal may exercise it after the publication of the supplement, will be reduced from three working days back to two working days as of 1 January 2023.

Upon inquiry with the competent supervisory authorities, there will be no successor provisions identical to paragraphs (2a) and (3a) in the short term. However, the European Commission Proposal includes amendments that essentially adopt these provisions of the PR Amendment Regulation. It is not yet clear when and in what form these provisions will be (re)incorporated into the Prospectus Regulation.

### Revocation of the extension of the issue volume in connection with the prospectus exemption for continuous issues by credit institutions

The prospectus exemptions in Article 1 (4)(l) and Article 1 (5)(k) of the Prospectus Regulation, as amended by the PR Amendment Regulation, provided that, until 31 December 2022, non-equity securities may be offered by credit institutions **up to an aggregate total amount of the securities offered in the European Union of EUR 150,000,000** (instead of EUR 75,000,000) without publication of a prospectus in a continuous or repeated manner calculated over a period of 12 months, provided that the securities are not subordinated, convertible or exchangeable, and do not give a right to subscribe for or acquire other types of securities and are not linked to a derivative instrument.

**As of 1 January 2023, the aggregate total amount of the securities offered in the European Union of up to EUR 75,000,000 will again be applicable.**

## Abolition of the EU recovery prospectus

The prospectus type "EU Recovery Prospectus," which was intended to facilitate the recapitalisation of companies that have been economically and financially stressed by the COVID-19 pandemic, expires on 31 December 2022.

### About Wolf Theiss

Wolf Theiss is one of the leading European law firms in Central, Eastern and South-Eastern Europe with a focus on international business law. With more than 360 lawyers in 13 countries, over 80% of the firm's work involves cross-border representation of international clients. Combining expertise in law and business, Wolf Theiss develops innovative solutions that integrate legal, financial and business know-how.

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