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EUROPEAN COMMISSION ADOPTS PACKAGE OF MEASURES FOR THE RECOVERY OF THE CAPITAL MARKETS

AMENDMENT OF THE INFORMATION REQUIREMENTS AND THE RIGHT OF WITHDRAWAL FOR PROSPECTUS SUPPLEMENTS; EXTENSION OF A PROSPECTUS EXEMPTION; INTRODUCTION OF THE EU RECOVERY PROSPECTUS

On 24 July 2020, the European Commission adopted a proposal for a package of measures for the recovery of the capital markets¹, which provides for adjustments to Regulation (EU) 575/2013 (CRR), Directive 2014/65/EU (MiFID II), Regulation (EU) 2017/2402 (Securitisation Regulation) and Regulation (EU) 2017/1129 (the "**Prospectus Regulation**"). With respect to the Prospectus Regulation, the European Commission proposes temporary measures to address the economic impact of the COVID-19 pandemic and permanent changes to the information requirements and the right of withdrawal in connection with the publication of prospectuses supplements. The ball is now in the European Parliament's court.

AMENDMENTS TO THE PROSPECTUS SUPPLEMENTS REGIME

The obligations of financial intermediaries introduced by Article 23 (3) of the Prospectus Regulation, (i) to inform investors about the possible publication of a supplement, about the place and time of such publication and about the fact that the financial intermediary would in such cases help investors to exercise their right of withdrawal and (ii) to contact investors on the day of publication of the supplement, caused irritation not only among Austrian credit institutions and other financial intermediaries, but throughout the entire area of application of the Prospectus Regulation.

These problematic information requirements were further intensified by the ESMA Q&As on the Prospectus Regulation² (the "**ESMA Q&As**"). Point 8.3 of the ESMA Q&As clarifies that the scope of application of Article 23 (3) of the Prospectus Regulation, which according to

¹ European Commission, Coronavirus response: Making capital markets work for Europe's recovery, 24 July 2020 (https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1382, last retrieved on 30 July 2020).

² ESMA, Questions and Answers on the Prospectus Regulation (ESMA31-62-1258), last retrieved on 18 February 2020.

its wording only requires financial intermediaries to contact investors on the same day, also includes credit institutions (issuers) selling their own issued securities.

In order to alleviate this problem and to relieve financial intermediaries, the European Commission's proposal clarifies the obligations of financial intermediaries in connection with supplements.

On the basis of the European Commission's proposal, a financial intermediary would only have to inform those investors of the possible publication of a supplement who have purchased or subscribed to a security from it, provided that the purchase or subscription was agreed between the prospectus approval and the expiry of the offer period or before the beginning of trading of the respective securities on a regulated market, whichever comes later. The financial intermediary would therefore only have to inform those investors who actually have a right of withdrawal.

In addition, the European Commission's proposal extends the deadline for investor information to one working day after the publication of the supplement. Consequently, financial intermediaries would not be subject to a same-day information obligation if the European Commission's proposal were to be adopted.

In return, in order to maintain a high level of investor protection, the period during which investors can exercise their right of withdrawal would be extended from two to three days after the publication of a supplement.

These proposed amendments to Article 23 of the Prospectus Regulation would be valid indefinitely if the proposal is adopted by the European Parliament and would therefore amend the Prospectus Regulation on a permanent basis.

FURTHER AMENDMENTS

▪ New threshold for the permanent issuing privilege of credit institutions

Another amendment would aim at supporting credit institutions that have provided financial support to companies during the COVID-19 pandemic. Credit institutions are expected to play a central role in the post-Corona recovery phase. To support smaller credit institutions, the European Commission proposes to extend the exemption in Article 1 (4) (j) of the Prospectus Regulation. This should double the aggregate total consideration of securities offered in the Union from currently less than EUR 75 million to less than EUR 150 million. This would allow credit institutions to offer non-equity securities up to a total aggregate consideration of the securities offered of EUR 150 million in the Union without the publication of a prospectus. This regulation is to be valid for 18 months from the entry into force of the European Commission's proposal.

▪ EU Recovery Prospectus

Finally, the European Commission's proposal aims to introduce a new type of prospectus limited to 18 months, the "EU Recovery Prospectus". The EU Recovery Prospectus is intended to facilitate recapitalisation for companies that have relevant experience in the public market and have come under economic pressure due to COVID-19. This short prospectus will consist of a single document of only 30 pages and will be limited to the essential information that investors need to make an informed decision. It is intended for issuers that

have been listed on a stock exchange for at least 18 months and require new capital to be raised through the issue of shares rather than through further indebtedness of the company.

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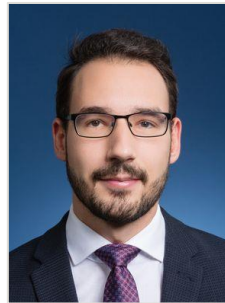
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