

II

(Non-legislative acts)

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) No 759/2013

of 30 April 2013

amending Regulation (EC) No 809/2004 as regards the disclosure requirements for convertible and exchangeable debt securities

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

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) 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 ⁽²⁾ sets out the minimum information to be included in a prospectus for different kinds of securities in order to comply with Article 7(1) of Directive 2003/71/EC.
- (2) The share registration document schedule should be applicable to shares and other transferable securities equivalent to shares but also to other securities giving access to the capital of the issuer by way of conversion or exchange where the underlying shares are not already admitted to trading on a regulated market.
- (3) Where the issuer of the underlying shares belongs to the same group as the issuer of the convertible or exchangeable debt securities but the underlying shares are not admitted to trading on a regulated market, information on the issuer is not easily available to investors. Therefore, the share registration schedule

should be applicable to those underlying shares and should be added to the combinations used for drawing up the prospectus.

- (4) Where securities with warrants or derivative securities give the right to acquire the issuer's or group's shares and those shares are not admitted to trading on a regulated market, the relevant information set out in the securities note schedule for derivative securities should be provided to investors.
- (5) Where debt securities are exchangeable or convertible into shares already admitted to trading on a regulated market, information on the underlying shares is already available to shareholders and investors in general. Therefore, it should be clarified that it is sufficient to add a statement setting out the type of the underlying and details of where information on the underlying can be obtained in the combinations used for drawing up the securities note of the prospectus.
- (6) Where debt securities are convertible or exchangeable into shares which are or will be issued by the issuer of the security or by an entity belonging to its group and these underlying shares are not already admitted to trading on a regulated market, investors should also be provided with a working capital statement and a statement of capitalisation and indebtedness of the issuer of the underlying shares. Those statements would provide investors in the securities note with the same information on the ability of the issuer of the underlying shares to continue as a going concern and on its indebtedness compared to its capitalisation as would be available when investing in shares directly.
- (7) Where the underlying shares are issued by a third party and are not admitted to trading on a regulated market the investors do not have easy access to a description of those underlying shares. Therefore, the additional building block describing the underlying share should be added to the combinations used for drawing up the securities note of the prospectus.

⁽¹⁾ OJ L 345, 31.12.2003, p. 64.

⁽²⁾ OJ L 149, 30.4.2004, p. 1.

- (8) For reasons of legal certainty it is necessary to clarify, in the table set out in Annex XVIII to Regulation (EC) No 809/2004, how schedules and building blocks should be combined when drawing up a prospectus, including where only certain information items of schedules and building blocks are required, where certain information items may not be applicable due to specific combinations of schedules and building blocks in particular cases, and where the issuer, offeror or person asking for admission to trading on a regulated market may choose between different schedules and building blocks according to specific thresholds, such as the minimum denomination of debt securities, or conditions set out in Regulation (EC) No 809/2004.
- (9) The term 'bonds' should be replaced by the term 'debt securities' in order to ensure consistency of terminology within Regulation (EC) No 809/2004.
- (10) The application of the pro forma financial information building block set out in Annex II to Regulation (EC) No 809/2004 is conditional upon a significant gross change in the size of the issuer, therefore the words '(if applicable)' should be added to the heading of the column entitled 'BUILDING BLOCK' applicable to the registration document in Annex XVIII to that Regulation to reflect the conditional applicability of Annex II to that Regulation.
- (11) Convertible or exchangeable debt securities can provide access to issuer's new shares when the right to subscribe is exercised by their holders. Accordingly, rights issues of convertible or exchangeable debt securities into issuer's new shares should also be able to benefit from the proportionate disclosure regime set out in Article 26a of Regulation (EC) No 809/2004 provided that the underlying shares are new shares issued by the same entity issuing debt securities. The prospectus for the offer or admission to trading on a regulated market of debt securities convertible or exchangeable into issuer's shares issued by small and medium sized enterprises and companies with reduced market capitalisation should also benefit from the proportionate disclosure regime set out in Article 26b of Regulation (EC) No 809/2004. Accordingly, the combination of schedules and building blocks applicable to rights issues of debt securities convertible or exchangeable into issuer's shares or to convertible or exchangeable debt securities issued by small and medium sized enterprises and companies with reduced market capitalisation should be included in Annex XVIII.
- (12) In consideration of the need to provide issuers with a transitional period to adapt to the new requirements introduced by this Regulation, this Regulation should only apply to prospectuses and base prospectuses which have been approved by a competent authority on the date of or after its entry into force.
- (13) Regulation (EC) No 809/2004 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EC) No 809/2004

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

- (1) in Article 6, the following paragraph 3 is added:

'3. Where shares with warrants give the right to acquire the issuer's shares and these shares are not admitted to trading on a regulated market, the information required by the schedule set out in Annex XII except item 4.2.2 shall also be given.'

- (2) in Article 8, the following paragraphs 3, 4 and 5 are added:

'3. Where debt securities are exchangeable or convertible into shares already admitted to trading on a regulated market, the information required by item 4.2.2 of the schedule set out in Annex XII shall also be given.

4. Where debt securities are convertible or exchangeable into shares which are or will be issued by the issuer of the debt security or by an entity belonging to its group and these underlying shares are not already admitted to trading on a regulated market, information on the issuer of the underlying shares shall also be given in accordance with items 3.1 and 3.2 of the schedule set out in Annex III or, as the case may be, of the proportionate schedule set out in Annex XXIV.

5. Where debt securities with warrants give the right to acquire the issuer's shares and these shares are not admitted to trading on a regulated market, the information required by the schedule set out in Annex XII except item 4.2.2 shall also be given.'

- (3) in Article 15, paragraph 2 is replaced by the following:

'2. The schedule shall apply to securities which are not in the scope of application of the other securities note schedules referred to in Articles 6, 8 and 16, except for the cases mentioned in Article 6(3), Article 8(3) and (5) and Article 16(3) and (5). The schedule shall apply to certain securities where the payment and/or delivery obligations are linked to an underlying.'

- (4) in Article 16 the following paragraphs 3, 4 and 5 are added:

'3. Where debt securities are exchangeable or convertible into shares already admitted to trading on a regulated market, the information required by item 4.2.2 of the schedule set out in Annex XII shall also be given.

4. Where debt securities are convertible or exchangeable into shares which are or will be issued by the issuer of the debt security or by an entity belonging to its group and these underlying shares are not already admitted to trading on a regulated market, information on the issuer of the underlying shares shall also be given in accordance with items 3.1 and 3.2 of the schedule set out in Annex III or, as the case may be, of the proportionate schedule set out in Annex XXIV.

5. Where debt securities with warrants give the right to acquire the issuer's shares and these shares are not admitted to trading on a regulated market, the information required by the schedule set out in Annex XII except item 4.2.2 shall also be given.;

(5) in Article 17(2), point 2 is replaced by the following:

2. provided that these shares or other transferable securities equivalent to shares are or will be issued by the issuer of the security, by an entity belonging to the group of that issuer or by a third party and are not yet traded on a regulated market or an equivalent market outside the Union at the time of the approval of the prospectus covering the securities, and that the underlying shares or other transferable securities equivalent to shares can be delivered with physical settlement.;

(6) the title of Annex XIV is replaced by the following:

'Additional information building block on the underlying share';

(7) Annex XVIII is replaced by the text in the Annex to this Regulation.

Article 2

Transitional provision

1. This Regulation shall not apply to the approval of a supplement to a prospectus or base prospectus where the prospectus or base prospectus was approved before the date referred to in Article 3.

2. Where in accordance with Article 18 of Directive 2003/71/EC the competent authority of the home Member State notifies the competent authority of the host Member State with a certificate of approval in relation to a prospectus or a base prospectus approved before the date referred to in Article 3, the competent authority of the home Member State shall clearly and explicitly indicate in the certificate that the prospectus or base prospectus was approved before the date referred to in Article 3.

Article 3

Entry into force

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

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

Done at Brussels, 30 April 2013.

For the Commission
The President
José Manuel BARROSO

ANNEX

'ANNEX XVIII

PART I

Table of combinations

| No | ANNEX XVIII Part I | | REGISTRATION DOCUMENT | | | | | | | | |
|----|--|---|-----------------------|--|---|-------------------------------|---------------------------------|--|---|---|--|
| | | | SCHEDULES | | | | BUILDING BLOCK | SCHEDULES | | | |
| | TYPES OF SECURITIES | | Share | Debt and Derivative (< EUR 100 000) | Debt and Derivative (> or = EUR 100 000) | Asset Backed Securities | Banks Debt and Derivative | Pro forma Information (if applicable) | Collective Investment Undertaking of the closed-end Type | States and their Regional and local Authorities | Public International Bodies/debt Securities guaranteed by a Member State of the OECD |
| 1 | Shares (preference shares, redeemable shares, shares with preferential subscription rights, etc.) | | | | | | | | | | |
| 2 | Debt securities (vanilla debt securities, income Debt securities, structured Debt securities, etc.) with a denomination of less than EUR 100 000 | | | OR | | | OR | | | | |
| 3 | Debt securities (vanilla Debt securities, income Debt Securities, structured Debt securities, etc.) with a denomination of at least EUR 100 000 | | | | OR | | OR | | | | |
| 4 | Debt securities guaranteed by a third party | | | OR | OR | | OR | | | | |
| 5 | Derivative securities guaranteed by a third party | | | OR | OR | | OR | | | | |
| 6 | Asset backed securities | | | | | | | | | | |
| 7 | Debt securities exchangeable or convertible into third party shares or issuer's or group shares which are admitted on a regulated market | | | OR | OR | | OR | | | | |
| 8 | Debt securities exchangeable or convertible into third party shares not admitted on a regulated market | Issuer of debt Securities exchangeable or convertible | | OR | OR | | OR | | | | |
| | | Issuer of (underlying) Shares | | | | | | | | | |

| No | ANNEX XVIII Part I | | REGISTRATION DOCUMENT | | | | | | | | |
|----|---|---|-----------------------|--|---|-------------------------------|---------------------------------|--|---|---|--|
| | | | SCHEDULES | | | | | BUILDING BLOCK | SCHEDULES | | |
| | TYPES OF SECURITIES | | Share | Debt and Derivative (< EUR 100 000) | Debt and Derivative (> or = EUR 100 000) | Asset Backed Securities | Banks Debt and Derivative | Pro forma Information (if applicable) | Collective Investment Undertaking of the closed-end Type | States and their Regional and local Authorities | Public International Bodies/debt Securities guaranteed by a Member State of the OECD |
| 9 | Debt securities exchangeable or convertible into the issuer's shares not admitted on a regulated market | | | | | | | | | | |
| 10 | Debt securities exchangeable or convertible into group's shares not admitted on a regulated market | Issuer of debt securities exchangeable or convertible | | OR | OR | | | OR | | | |
| | | Issuer of (underlying) shares | | | | | | | | | |
| 11 | Debt securities with warrants to acquire the issuer's shares not admitted to trading on a regulated market | | | | | | | | | | |
| 12 | Shares with warrants to acquire the issuer's shares not admitted to trading on a regulated market | | | | | | | | | | |
| 13 | Derivatives securities giving the right to subscribe or to acquire the issuer's shares not admitted on a regulated market | | | | | | | | | | |
| 14 | Derivatives securities giving the right to acquire group's shares not admitted on a regulated market | | | OR | OR | | | OR | | | |
| 15 | Derivatives securities giving the right to subscribe or to acquire issuer's or group shares which are admitted on a regulated market and derivatives securities linked to any other underlying than issuer's or group shares which are not admitted on a regulated market (including any derivatives securities entitling to cash settlement) | | | OR | OR | | | OR | | | |

| No | ANNEX XVIII Part I | | SECURITIES NOTE | | | | | | |
|----|--|---|----------------------------------|----------------------------|---------------------------------|-----------------------------|------------|----------------------------|----------------------|
| | | | SCHEDULES | | | ADDITIONAL BUILDING BLOCKS | | | |
| | TYPES OF SECURITIES | | Share | Debt (< EUR 100 000) | Debt (> or = EUR 100 000) | Derivatives securities | Guarantees | Asset backed securities | Underlying share |
| 1 | Shares (preference shares, redeemable shares, shares with preferential subscription rights, etc.) | | | | | | | | |
| 2 | Debt Securities (vanilla Debt Securities, income Debt Securities, structured Debt Securities, etc.) with a denomination of less than EUR 100 000 | | | | | | | | |
| 3 | Debt Securities (vanilla Debt Securities, income Debt Securities, structured Debt Securities, etc.) with a denomination of at least EUR 100 000 | | | | | | | | |
| 4 | Debt Securities guaranteed by a third party | | | OR | OR | | | | |
| 5 | Derivative securities guaranteed by a third party | | | | | | | | |
| 6 | Asset backed securities | | | OR | OR | | | | |
| 7 | Debt Securities exchangeable or convertible into third party shares or issuer's or group shares which are admitted on a regulated market | | | OR | OR | AND only item 4.2.2 | | | |
| 8 | Debt Securities exchangeable or convertible into third party shares not admitted on a regulated market | Debt Securities exchangeable or convertible | | OR | OR | | | | |
| | | (Underlying) Shares | | | | | | | AND except item 2 |
| 9 | Debt Securities exchangeable or convertible into the issuer's shares not admitted on a regulated market | | AND only items 3.1 and 3.2 | OR | OR | | | | |
| 10 | Debt Securities exchangeable or convertible into group's shares not admitted on a regulated market | Debt Securities exchangeable or convertible | | OR | OR | | | | |
| | | (Underlying) Shares | AND only items 3.1 and 3.2 | | | | | | |
| 11 | Debt securities with warrants to acquire the issuer's shares not admitted to trading on a regulated market | | | OR | OR | AND except item 4.2.2 | | | |
| 12 | Shares with warrants to acquire the issuer's shares not admitted to trading on a regulated market | | | | | AND except item 4.2.2 | | | |

| No | ANNEX XVIII Part I TYPES OF SECURITIES | SECURITIES NOTE | | | | | | |
|----|---|-----------------|----------------------------|---------------------------------|-----------------------------|----------------------------|----------------------------|------------------|
| | | SCHEDULES | | | | ADDITIONAL BUILDING BLOCKS | | |
| | | Share | Debt (< EUR 100 000) | Debt (> or = EUR 100 000) | Derivatives securities | Guarantees | Asset backed securities | Underlying share |
| 13 | Derivatives securities giving the right to subscribe or to acquire the issuer's shares not admitted on a regulated market | | | | AND except item 4.2.2 | | | |
| 14 | Derivatives securities giving the right to acquire group's shares not admitted on a regulated market | | | | AND except item 4.2.2 | | | |
| 15 | Derivatives securities giving the right to subscribe or to acquire issuer's or group shares which are admitted on a regulated market and derivatives securities linked to any other underlying than issuer's or group shares which are not admitted on a regulated market (including any derivatives securities entitling to cash settlement) | | | | | | | |

PART II

Table of combinations regarding rights issues of debt securities convertible or exchangeable into issuer's shares and debt securities convertible or exchangeable into issuer's shares where such rights issues and debt securities are issued by small and medium sized enterprises ("SMEs") or companies with reduced market capitalisation ("Small Caps") (proportionate disclosure regime)

However, issuers may choose to draw up the prospectus in accordance with the full disclosure regime.

| No | ANNEX XVIII Part II: PDR TYPES OF SECURITIES | REGISTRATION DOCUMENT | | | | | | | | |
|----|---|-----------------------|--|---|-------------------------------|---------------------------------|--|---|---|--|
| | | SCHEDULES | | | | | BUILDING BLOCK | SCHEDULES | | |
| | | Share | Debt and Derivative (< EUR 100 000) | Debt and derivative (> or = EUR 100 000) | Asset backed securities | Banks debt and derivative | Pro forma information (if applicable) | Collective investment undertaking of the closed-end type | States and their regional and local authorities | Public international Bodies/debt securities guaranteed by a Member State of the OECD |
| 1 | Rights issues of Debt Securities convertible or exchangeable into issuer's shares, when the issuer has shares of the same class already admitted on a regulated market or MTF if conditions in Article 26a(2) are fulfilled | | | | | | | | | |
| 2 | SMEs and Small Caps Debt securities exchangeable or convertible into third party shares or issuer's or group shares which are admitted on a regulated market | | OR | OR | | OR | | | | |

| No | ANNEX XVIII Part II: PDR TYPES OF SECURITIES | | REGISTRATION DOCUMENT | | | | | | | | | | |
|----|---|---|----------------------------------|--|---|-------------------------------|---------------------------------|----------------------------|--|---|---|--|--|
| | | | SCHEDULES | | | | | BUILDING BLOCK | SCHEDULES | | | | |
| | | | Share | Debt and Derivative (< EUR 100 000) | Debt and derivative (> or = EUR 100 000) | Asset backed securities | Banks debt and derivative | | Pro forma information (if applicable) | Collective investment undertaking of the closed-end type | States and their regional and local authorities | Public international Bodies/debt securities guaranteed by a Member State of the OECD | |
| 3 | SMEs and Small Caps Debt Securities exchangeable or convertible into third party shares not admitted on a regulated market | Debt Securities exchangeable or convertible | | OR | OR | | | OR | | | | | |
| | | (Underlying) Shares | | | | | | | | | | | |
| 4 | SMEs and Small Caps Debt Securities exchangeable or convertible into the issuer's shares not admitted on a regulated market | | | | | | | | | | | | |
| 5 | SMEs and Small Caps Debt Securities exchangeable or convertible into group's shares not admitted on a regulated market | Debt Securities exchangeable or convertible | | OR | OR | | | OR | | | | | |
| | | (Underlying) Shares | | | | | | | | | | | |
| No | ANNEX XVIII Part II: PDR TYPES OF SECURITIES | | SECURITIES NOTE | | | | | ADDITIONAL BUILDING BLOCKS | | | | | |
| | | | SCHEDULES | | | | Derivatives Securities | Guarantees | Asset backed securities | Underlying share | | | |
| | | | Share | Debt (< EUR 100 000) | Debt (> or = EUR 100 000) | | | | | | | | |
| 1 | Rights issues of debt securities exchangeable or convertible into issuer's shares, when the issuer has shares of the same class already admitted on a regulated market or MTF if conditions in Article 26a(2) are fulfilled | | AND only items 3.1 and 3.2 | OR | OR | | | | AND except item 2 | | | | |
| 2 | SMEs and Small Caps Debt Securities exchangeable or convertible into third party shares or issuer's or group shares which are admitted on a regulated market | | | OR | OR | AND only item 4.2.2 | | | | | | | |

| No | ANNEX XVIII Part II: PDR | | SECURITIES NOTE | | | | | | |
|----|---|---|-----------------------------------|----------------------------|---------------------------------|----------------------------|------------|----------------------------|----------------------|
| | | | SCHEDULES | | | ADDITIONAL BUILDING BLOCKS | | | |
| | TYPES OF SECURITIES | | Share | Debt (< EUR 100 000) | Debt (> or = EUR 100 000) | Derivatives Securities | Guarantees | Asset backed securities | Underlying share |
| 3 | SMEs and Small Caps Debt securities exchangeable or convertible into third party shares not admitted on a regulated market | Debt Securities exchangeable or convertible | | OR | OR | | | | |
| | | Underlying Shares | | | | | | | AND except item 2 |
| 4 | SMEs and Small Caps Debt securities exchangeable or convertible into the issuer's shares not admitted on a regulated market | | AND only items 3.1 and 3.2 | OR | OR | | | | |
| 5 | SMEs and Small Caps Debt securities exchangeable or convertible into group's shares not admitted on a regulated market | Debt securities | | OR | OR | | | | |
| | | (Underlying) Shares | AND only items 3.1 and 3.2' | | | | | | |