

## **Practical guide on Regulation (EU) 2019/2115 regarding the promotion of the use of SME growth markets**

The Cyprus Securities and Exchange Commission has prepared this document with the aim to provide the industry with an outline of the new amendments introduced in Regulations (EU) 596/2014 (MAR Regulation) and (EU) 2017/1129 (Prospectus Regulation) by Regulation (EU) 2019/2115 of the European Parliament and the Council of 27 November 2019 as regards the promotion of the use of SME growth markets. Regulation 2019/2115 was published on the 11<sup>th</sup> December 2019 and is an action which forms part of the action plan for a Capital Markets Union.

### **A. Introduction – Legal Framework**

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 European Union that seek to raise capital on trading venues usually face high one-off and ongoing disclosure and compliance costs which can deter them from ever seeking admission to trading on Union trading venues.
2. Directive 2014/65/EU of the European Parliament and of the Council (MiFID II) 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.
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 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, it has been recorded that it 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.
4. For all the reasons stated above, it became necessary to introduce amendments to Regulations 596/2014 and 2017/1129 in order to cut red tape, improve the information available to SMEs about finance options available to them and help those SMEs with growth potential develop.

### **B. Main changes introduced by Regulation 2019/2115**

#### **Amendments to Regulation 596/2014 (MAR Regulation)**

- **Article 11** of MAR is amended so that the disclosure of inside information in respect of private placement of bonds shall 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.
- **Article 13** of MAR is amended so that an issuer of financial instruments admitted to trading on an SME growth market may enter into a liquidity contract with a liquidity provider under certain conditions, without to be deemed to be engaging in market manipulation.
- **Article 17(4)** of MAR is amended so that issuers of financial instruments admitted to trading on an SME growth market, may provide an explanation of the reasons for the delay in the disclosure of inside information to their competent authority only upon request.
- **Article 18** of MAR is amended so that issuers whose financial instruments are admitted to trading on an SME growth market 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.
- **Article 19(3)** of MAR is amended to allow disclosure of transactions carried out by persons discharging managerial responsibilities ('PDMRs') and persons closely associated with them ('PCAs') within two business days of receipt of notification of those transactions by the PDMRs or the PCAs.

The above mentioned amendments to the MAR Regulation shall apply from **1 January 2021**.

#### **Amendments to regulation 2017/1129 (Prospectus Regulation)**

- **Article 1** is amended to clarify the situations to which the exemptions from the obligation to publish a prospectus in the case of securities offered in connection with an exchange offer, a merger or a division [articles 1(4)(f),(g) and 1(5)(e),(f)], shall apply. With this amendment it is effectively clarified that there is 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.
- **Article 14** is amended to 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 non-equity securities or securities giving access to equity securities fungible with existing equity securities of the issuer already admitted to trading. Also, a simplified prospectus can be used 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.
- **Article 15** is amended to allow issuers seeking an initial public offer at the same time as seeking admission to trading on a SME growth market, with a tentative

market capitalisation below EUR 200 000 000, to draw up an EU Growth prospectus.

The above mentioned amendments to the Prospectus Regulation apply from **31 December 2019**.