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COVER NOTE

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	12 June 2015
To:	Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union

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Subject:	COMMISSION DELEGATED REGULATION (EU) No .../.. of 12.6.2015 amending Regulation (EC) No 1569/2007 establishing a mechanism for the determination of equivalence of accounting standards applied by third country issuers of securities pursuant to Directive 2003/71/EC and 2004/109/EC of the European Parliament and of the Council

Delegations will find attached document C(2015) 3835 final.

Encl.: C(2015) 3835 final



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COMMISSION DELEGATED REGULATION (EU) No .../..

of 12.6.2015

amending Regulation (EC) No 1569/2007 establishing a mechanism for the determination of equivalence of accounting standards applied by third country issuers of securities pursuant to Directive 2003/71/EC and 2004/109/EC of the European Parliament and of the Council

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

The Prospectus¹ and Transparency² Directives provide that the financial information contained (1) in the prospectuses filed by third country issuers seeking to list their securities in the EU and (2) in the financial statements prepared by third country issuers whose securities are already listed in the EU, is to be prepared in accordance with International Financial Reporting Standards (IFRS) or any other standard which has been declared equivalent to IFRS.

In order to ensure that a determination of the equivalence of third country accounting standards is made in all cases that are relevant to EU markets, a mechanism³ to determine the equivalence of the Generally Accepted Accounting Principles (GAAP) from third countries was established in 2007.

The scope of this delegated act covers the extension in time of the equivalence mechanism for a limited period of time. Prolonging the temporary equivalence mechanism would give more time to countries which had committed to converge to or adopt IFRS and have made important progress towards that goal. At present, only GAAP of India are covered by the temporary equivalence decisions that expire on 31 December 2014.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

In February 2014, the Commission services requested the European Securities and Markets Authorities (ESMA) to provide an update on developments towards IFRS in the Republic of India. ESMA delivered its report in October 2014. Based on this update the Commission services prepared a staff working paper that provides an update on the progress of Indian authorities towards adoption of or convergence with IFRS accordingly.

On the basis of this input, the Commission services drafted three legal acts designed to update and prolong the equivalence mechanism and the related measures which expire at the end of 2014. The rationale for the present delegated Regulation is to maintain in place the equivalence test, while supporting the efforts of Indian authorities which have decided to converge towards or adopt IFRS.

During the process of drafting, the text has been brought to the attention of the Experts Group of the European Securities Committee and the consulted national experts did not express any objections or reservations.

¹ 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 (OJ L 345, 31.12.2003, p. 64).

² Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (OJ L 390, 31.12.2004, p. 38).

³ Commission Regulation (EC) No 1569/2007 of 21 December 2007 establishing a mechanism for the determination of equivalence of accounting standards applied by third country issuers of securities pursuant to Directives 2003/71/EC and 2004/109/EC of the European Parliament and of the Council (OJ L 340, 22.12.2007, p. 66)..

3. LEGAL ELEMENTS OF THE DELEGATED ACT

This Commission Delegated Regulation has a dual legal basis because the information required under Directive 2004/109/EC is closely connected to the information required under Directive 2003/71/EC. Thus, it is appropriate that the same criteria for determination of equivalence apply in the framework of both Directives.

Both the Prospectus and the Transparency Directives have been amended to reflect the changes introduced by the Treaty of Lisbon as regards in particular a clear distinction between delegated and implementing acts (Articles 290 and 291 respectively). Consequently, the Articles which serve as a legal basis for the determination of equivalence have also been amended and provide for the adoption of delegated acts. Therefore, the present amending Regulation takes the form of a delegated act.

This Delegated Regulation amends Article 4(1) of Regulation (EC) No 1569/2007 in order to prolong in time the conditions for acceptance of third country accounting standards for a limited period. It is proposed, therefore, to maintain the temporary equivalence mechanism in order to allow third country issuers to use the Indian GAAP when reporting in the EU until 31 March 2016.

COMMISSION DELEGATED REGULATION (EU) No .../..

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amending Regulation (EC) No 1569/2007 establishing a mechanism for the determination of equivalence of accounting standards applied by third country issuers of securities pursuant to Directive 2003/71/EC and 2004/109/EC of the European Parliament and of the Council

(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/EC⁴, and in particular the first subparagraph of Article 20(3) thereof,

Having regard to Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC⁵, and in particular the fourth subparagraph of Article 23(4) thereof,

Whereas:

- (1) Article 23(4) of Directive 2004/109/EC requires the Commission to set up a mechanism for the determination of the equivalence of the information required under this Directive. The Commission is required to adopt measures to establish general equivalence criteria regarding accounting standards relevant to issuers of more than one country. Article 23(4) of Directive 2004/109/EC also requires the Commission to take decisions in relation to the equivalence of accounting standards used by third country issuers, and enables the Commission to allow the use of third country accounting standards during an appropriate transitional period. Given the close interconnection of the information required under Directive 2004/109/EC with the information required under Directive 2003/71/EC, it is appropriate that the same criteria for determination of equivalence apply in the framework of both Directives.
- (2) Accordingly, Commission Regulation (EC) No 1569/2007⁶ laid down the conditions for acceptance of third country accounting standards for a limited period expiring on 31 December 2014.

⁴ OJ L 345, 31.12.2003, p. 64.

⁵ OJ L 390, 31.10.2004, p. 38

⁶ OJ L 340, 22.12.2007, p.66

- (3) The Commission evaluated the usefulness and functioning of the equivalence mechanism for a limited period of time and concluded that it should be extended until 31 March 2016. Since the period for which the Commission had put in place conditions for granting equivalence to the Generally Accepted Accounting Principles (GAAP) of third countries, expired on 31 December 2014, this Regulation should apply from 1 January 2015 and enter into force without delay. This is necessary in order to provide legal certainty to issuers from the relevant third countries listed in the Union and to avoid the risk that they might have to reconcile their financial statements with International Financial Reporting Standards (IFRS). The provision of retroactivity thus alleviates any potential additional burden on the issuers concerned.
- (4) Regulation (EC) No 1569/2007 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1569/2007 is amended as follows:

- (a) In paragraph 1 of Article 4 the date 31 December 2014 is replaced by the date 31 March 2016;
- (b) In point (a) of Article 4(1), the date 31 December 2014 is replaced by the date 31 March 2016;
- (c) In point (i) of Article 4(1)(a), the date 31 December 2014 is replaced by the date 31 March 2016;
- (d) In point (b) of Article 4(1), the date 31 December 2014 is replaced by the date 31 March 2016;

Article 2

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

It shall apply from 1 January 2015.

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

Done at Brussels, 12.6.2015

For the Commission
The President
Jean-Claude JUNCKER