

# The Luxembourg Stock Exchange updates its Rules and Regulations

On January 15 2020, the Luxembourg Stock Exchange published a new version of its rules and regulations which entered into force on January 31 2020 (the **New Rules and Regulations**). The New Rules and Regulations aim to reflect recent changes in the legal and regulatory framework introduced by the new law on prospectuses, as well as to take into account the feedback received by the Luxembourg Stock Exchange from market participants over the last few years. According to the Luxembourg Stock Exchange, the main objective of the New Rules and Regulations (besides the integration of mandatory legal changes) is to “*provide [its] clients with greater clarity, increased transparency and improved usability*”, which will also allow for faster turn-around times for submitted offering documents.

## Changes to reflect the new Prospectus Regime

On July 2 2019, the Luxembourg Parliament adopted a new law on prospectuses, which entered into force on July 21 2019 (the **New Prospectus Law**). The purpose of the New Prospectus Law is to adapt national law following the entry into force of Regulation (EU) 2017/1129 of the European Parliament and of the Council of June 14 2017 (the **Prospectus Regulation**). The Grand Duchy of Luxembourg has simplified its specific regime for an alleviated prospectus (formerly known as a “simplified prospectus”). An alleviated prospectus is to be used in certain cases where the issuance would not fall under the obligation to draw up a prospectus pursuant to the Prospectus Regulation. The Luxembourg Stock Exchange has introduced in the New Rules and Regulations an appendix for such alleviated prospectuses<sup>1</sup>, called “short-form” prospectuses. The New Rules and Regulations list the content requirements for such alleviated prospectuses in a user-friendly and concise manner.

The appendix relating to alleviated prospectuses is, for example, relevant for securities where the issuer is guaranteed by EU member states or their regional/local authorities, for money market instruments and for securities issued by public international bodies opting for a voluntary alleviated prospectus. Multilateral institutions which are not Public International Bodies (as defined in the New Rules and Regulations), and of which at least one OECD Member State is a member, benefit from the new short-form prospectus regime which requires no issuer disclosure. Under the previous rules and regulations, only fully fledged supranational issuers could benefit from this simplified regime. The same short-form prospectus is now also an option for non-equity securities issued in a continuous or repeated manner by credit institutions.

The New Rules and Regulations have also been amended to reflect changes made in the New Prospectus Law to align it with the format and language used in the Prospectus Regulation in order to achieve a coherent and harmonised, regime for offering documents generally.

## Simplifying the Euro MTF Regime

The New Rules and Regulations further simplify the previous rules and regulations to impose fewer requirements in respect of listing on the Euro MTF. For example, the New Rules and Regulations now provide fourteen templates set out in appendices for both issuers and securities across all asset classes to be used as building blocks for the prospectus content. Previously, the rules and regulations of the Luxembourg Stock Exchange contained specific appendices with separate schedules which listed information to be included in a prospectus for warrants, credit-linked notes, certificates or structured notes, and which included a more complex mechanism of cross-referencing.<sup>2</sup>

Furthermore, the New Rules and Regulations set out lighter content requirements, which grant additional flexibility to issuers. In this respect it should be noted that the new risk factor requirements under the Prospectus Regulation are not applicable to issues on the Euro MTF.

In addition, the New Rules and Regulations now provide for more exemptions regarding listing on the Euro MTF as well as a single prospectus regime for debt securities which no longer makes a distinction between the wholesale and the retail market. A prospectus prepared for securities to be admitted to trading on the Euro MTF is similar in terms of format and wording to a prospectus prepared in accordance with the Prospectus Regulation, but there are fewer content requirements.

<sup>1</sup> Appendix XIV (Short form prospectus) of the New Rules and Regulations

<sup>2</sup> Appendices IV, V and VI of the rules and regulations of the Luxembourg Stock Exchange dated November 2018

The New Rules and Regulations include lighter requirements for various items, in particular the following examples may be of interest.

- An issuer whose shares are already listed on a regulated or equivalent market may be exempt from disclosing certain information, such as its financial information, provided that it discloses the name of the market where such shares are admitted and their international security identification number. Similarly, if a guarantor is listed on a regulated or equivalent market, the disclosure of financial statements is waived.
- If an issuer which is a wholly owned subsidiary included in the consolidated accounts of its holding company issues securities that are unconditionally guaranteed by its holding company, such issuer does not need to provide its financial information, but only the relevant consolidated accounts. Similarly, with respect to guarantors who are in the scope of consolidation of group financial statements, disclosure of the group's financial statements will be sufficient.<sup>3</sup>
- There are now alleviated disclosure requirements for secondary issuances of debt securities, as set out in Appendix XIII to the New Rules and Regulations.
- With respect to convertible debt and derivative securities giving the right to acquire shares, the New Rules and Regulations are less stringent and only require the same level of issuer disclosure as that required of other debt securities. Previously, more detailed information had to be provided on the underlying shares, equivalent to that required for an equity listing, and the underlying shares had to be listed.
- The New Rules and Regulations now include a single schedule for all types of investment funds whether they are open-ended or closed-ended.
- With respect to derivative securities where the underlying is a fund with a NAV, such fund does not need to be a listed vehicle.
- Information can be generally incorporated by reference. For example, it is sufficient for financials to be disclosed through incorporation of the annual report by reference, and in the case of asset-backed securities, information on the underlying does not need to be fully disclosed in the prospectus provided such information is publicly available.

<sup>3</sup> Appendix III of the New Rules and Regulations (*Guarantee building bloc*)



## Changes related to AML/KYC rules

Currently, anti-money laundering and know-your-customer (AML/KYC) rules are being tightened across the globe, including in the EU through the EU AML Directives IV and V, which have now been transposed into Luxembourg laws and regulations.

In order to reflect this, the New Rules and Regulations include provisions relating to the fight against money laundering and terrorist financing. In particular, Article 107 of the New Rules and Regulations makes clear that *“the Luxembourg Stock Exchange may consider any Issuer’s failure to comply with the AML/KYC obligations imposed by the Luxembourg Stock Exchange as a breach of the [New Rules and Regulations]”*.

The compliance department of the Luxembourg Stock Exchange will conduct initial due diligence for each new issuer applying for a listing and/or an admission to trading of its securities on the Luxembourg markets. Applications for admission may be rejected if the results of the due diligence are not satisfactory or if the due diligence process cannot be completed.<sup>4</sup> In this respect, new specific KYC forms will need to be completed by first time issuers. However, the Luxembourg Stock Exchange has made clear that the listing/admission to trading process for existing issuers remains unchanged and that no AML/KYC form will need to be provided for new applications by existing issuers which have issued within the past 36 months. For such existing issuers, a revised risk classification process will be implemented in line with the new AML/KYC policy of the Luxembourg Stock Exchange. Depending on their risk classification, existing issuers will be contacted during the ongoing due diligence process in order to ensure that the mandatory filings and documentation are up-to-date.

In addition to the above, it should be kept in mind that where a prospectus has been approved in another EU Member State and passported to Luxembourg, in order to apply for admission to trading on the Luxembourg regulated market, the applicable KYC (to the extent required and not exempted) will need to be completed prior to listing.

## Final Thoughts

The New Rules and Regulations have been aligned to recent legal changes and are presented in a clear and user-friendly way. This particular set of amended rules and regulations demonstrates the responsiveness and flexibility of the Luxembourg Stock Exchange and its capacity to listen to the needs of market participants. However, time will show how useful these amendments will be for market participants in practice.

## Contacts



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<sup>4</sup> Article 311 (Initial Due Diligence and Identification of the Issuers) of the New Rules and Regulations

