

Commission Regulation (EC) No 211/2007 of 27 February 2007 amending Regulation (EC) No 809/2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards financial information in prospectuses where the issuer has a complex financial history or has made a significant financial commitment (Text with EEA relevance)

Article 1

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

1. In the second paragraph of Article 3, the second sentence is replaced by the following:
‘Subject to Article 4a(1), a competent authority shall not request that a prospectus contain information items which are not included in Annexes I to XVII.’
2. The following Article 4a is inserted:

Article 4a

Share registration document schedule in cases of complex financial history or significant financial commitment

1. Where the issuer of a security covered by Article 4(2) has a complex financial history, or has made a significant financial commitment, and in consequence the inclusion in the registration document of certain items of financial information relating to an entity other than the issuer is necessary in order to satisfy the obligation laid down in Article 5(1) of Directive 2003/71/EC, those items of financial information shall be deemed to relate to the issuer. The competent authority of the home Member State shall in such cases request that the issuer, the offeror or the person asking for admission to trading include those items of information in the registration document.

Those items of financial information may include pro forma information prepared in accordance with Annex II. In this context, where the issuer has made a significant financial commitment any such pro forma information shall illustrate the anticipated effects of the transaction that the issuer has agreed to undertake, and references in Annex II to “the transaction” shall be read accordingly.
2. The competent authority shall base any request pursuant to paragraph 1 on the requirements set out in item 20.1 of Annex I as regards the content of financial information and the applicable accounting and auditing principles, subject to any modification which is appropriate in view of any of the following factors:
 - a the nature of the securities;
 - b the nature and range of information already included in the prospectus, and the existence of financial information relating to an entity other than the issuer in a form that might be included in a prospectus without modification;
 - c the facts of the case, including the economic substance of the transactions by which the issuer has acquired or disposed of its business undertaking or any part of it, and the specific nature of that undertaking;
 - d the ability of the issuer to obtain financial information relating to another entity with reasonable effort.

Changes to legislation: Commission Regulation (EC) No 211/2007, Article 1 is up to date with all changes known to be in force on or before 02 February 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Where, in the individual case, the obligation laid down in Article 5(1) of Directive 2003/71/EC may be satisfied in more than one way, preference shall be given to the way that is the least costly or onerous.

3 Paragraph 1 is without prejudice to the responsibility under national law of any other person, including the persons referred to in Article 6(1) of Directive 2003/71/EC, for the information contained in the prospectus. In particular, those persons shall be responsible for the inclusion in the registration document of any items of information requested by the competent authority pursuant to paragraph 1.

4 For the purposes of paragraph 1, an issuer shall be treated as having a complex financial history if all of the following conditions apply:

- a its entire business undertaking at the time that the prospectus is drawn up is not accurately represented in the historical financial information which it is required to provide under item 20.1 of Annex I;
- b that inaccuracy will affect the ability of an investor to make an informed assessment as mentioned in Article 5(1) of Directive 2003/71/EC; and
- c information relating to its business undertaking that is necessary for an investor to make such an assessment is included in financial information relating to another entity.

5 For the purposes of paragraph 1, an issuer shall be treated as having made a significant financial commitment if it has entered into a binding agreement to undertake a transaction which, on completion, is likely to give rise to a significant gross change.

In this context, the fact that an agreement makes completion of the transaction subject to conditions, including approval by a regulatory authority, shall not prevent that agreement from being treated as binding if it is reasonably certain that those conditions will be fulfilled.

In particular, an agreement shall be treated as binding where it makes the completion of the transaction conditional on the outcome of the offer of the securities that are the subject matter of the prospectus or, in the case of a proposed takeover, if the offer of securities that are the subject matter of the prospectus has the objective of funding that takeover.

6 For the purposes of paragraph 5 of this Article, and of item 20.2 of Annex I, a significant gross change means a variation of more than 25 %, relative to one or more indicators of the size of the issuer's business, in the situation of an issuer.

3. In the first paragraph of item 20.1 of Annex I, and items 20.1 and 20.1 *bis* of Annex X, the following sentence is inserted in each case after the first sentence:

‘If the issuer has changed its accounting reference date during the period for which historical financial information is required, the audited historical information shall cover at least 36 months, or the entire period for which the issuer has been in operation, whichever is the shorter.’

4. In the first paragraph of item 13.1 of Annex IV, items 8.2 and 8.2 *bis* of Annex VII, item 11.1 of Annex IX, and item 11.1 of Annex XI, the following sentence is inserted in each case after the first sentence:

‘If the issuer has changed its accounting reference date during the period for which historical financial information is required, the audited historical information shall

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cover at least 24 months, or the entire period for which the issuer has been in operation, whichever is the shorter.’

Changes to legislation:

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Changes and effects yet to be applied to :

- Regulation implicit repeal by [EUR 2019/980](#) Regulation