

Procedure for verifying compliance by an issuer of a transferable security with its obligation under Union law

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LUXEMBOURG
STOCK EXCHANGE

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Background, purpose and scope

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1.1 Background

According to Article 51(4) of the Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments (hereinafter **"MiFID II"**), implemented in Luxembourg by the Law of 30 May 2018, "Member States shall ensure that regulated markets have established the necessary arrangements to review regularly the compliance with the admission requirements of the financial instruments which they admit to trading."

The abovementioned provision was further detailed by the Commission Delegated Regulation (EU) 2017/568 of 24 May 2016 supplementing MiFID II with regard to regulatory technical standards for the admission of financial instruments to trading on regulated markets (hereinafter **"RTS 17"**).

According to Article 7 of RTS 17:

1. *Regulated markets shall adopt and publish on their website procedures for verifying compliance by an issuer of a transferable security with its obligations under Union law.*
2. *Regulated markets shall ensure that compliance with the obligations referred to in paragraph 1 is checked effectively in accordance with the nature of the obligation under review taking into account the supervisory tasks performed by relevant competent authorities.*
3. *Regulated markets shall ensure that the procedures referred to in paragraph 1 describe:*
   - *(a) the processes the regulated markets employ to achieve the outcome specified in paragraph 1;*
   - *(b) how an issuer may best demonstrate compliance with the obligations referred to in paragraph 1 to the regulated market.*
4. *Regulated markets shall ensure that an issuer is made aware of the obligations referred to in paragraph 1 upon admission to trading of that issuer's transferable security and at the issuer's request.*

1.2 Purpose

The present procedure (hereinafter **"Procedure"**) intends to describe the arrangements that the Luxembourg Stock Exchange (hereinafter **"LuxSE"**) has in place in order to verify the compliance of issuers with their obligations under Union law.

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Background, purpose and scope

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1.3 Scope

According to Recital 7 of RTS 17, "Arrangements by regulated markets in relation to verifying the compliance of issuers with obligations under Union law and in relation to facilitating access to information which has been made public under Union law should cover the obligations laid down" in the following European Union (hereinafter "EU") acts:

- Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse, as amended (hereinafter "MAR");
- 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, as amended (hereinafter "Prospectus Directive"1);
- 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, as amended (hereinafter "Transparency Directive").

"as those legislative acts contain the core and most important obligations for issuers after the initial admission to trading on a regulated market."

It shall be noted that, notwithstanding the limited scope of RTS 17 (Regulated Market only), this Procedure shall apply to issuers whose securities are admitted to trading on the Regulated Market and/or the Euro MTF operated by the LuxSE.

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[1] *On 21 July 2019, Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market (hereinafter "Prospectus Regulation") fully repealed the Prospectus Directive. The obligations under the Prospectus Regulation shall replace mutatis mutandis as of 21 July 2019 the obligations under the Prospectus Directive.*

Regulatory mapping of issuers' key obligations under Union law

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Upon an issuer's application for an admission to trading of securities on one of the LuxSE's markets, certain legal obligations under Union law will apply.

The main obligations for issuers according to Union law as well as the obligations set forth by the LuxSE's Rules and Regulations (hereinafter **"LuxSE's R&R"**), are set out by the **Regulatory Mapping** made available on the LuxSE's website.

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Initial listing requirements, checks and controls

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3.1 The initial listing requirements

The Prospectus Directive/Prospectus Regulation, any related implementing laws, as well as the LuxSE's R&R set the requirements and procedures for the admission to trading of securities on one of the markets operated by the LuxSE.

Issuers applying for an admission to trading have to follow a specific process during which they will be required to provide, amongst other documents, a prospectus drafted in accordance with applicable rules and certain confirmations and certifications regarding the situation of the issuer.

The relevant issuer will have to provide in particular a duly completed application form and a letter of undertaking that require from the issuer to confirm that it will observe all rules applicable to itself and its securities and that it will comply with applicable obligations under Union law.

3.2 Procedure to verify compliance of issuers with initial listing requirements

The LuxSE, within the limits of its powers and obligations, scrutinises the received documents and performs an in-depth analysis in order to ensure the compliance of the issuer and its securities with the applicable framework.

To the extent possible, LuxSE assists issuers throughout the admission process by providing immediate responses to their questions and requests.

The LuxSE may reject an application for admission of a security for any appropriate reason including, but not limited to, the following events:

a) If the issuer does not meet one or more of the conditions and obligations set forth by the Union law and by the LuxSE's R&R;

b) If LuxSE considers that the admission of the securities is likely to be detrimental to the fair, orderly and efficient operation of the securities market concerned or to the reputation of the LuxSE as a whole;

c) If LuxSE deems that the situation of the issuer is such that the admission would be detrimental to the investors' interests.

Ad-hoc and ongoing requirements, checks and controls

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The majority of ongoing disclosure obligations applicable to issuers are imposed by Union law as transposed or implemented into national legislation. In addition, the LuxSE's R&R provide for supplementary communication and disclosure obligations, which aim at maintaining a high level of investor protection and a due and proper operation of the market. The obligations set out under Union law are mainly supervised by national competent authorities. Market operators, like the LuxSE, will verify an issuer's ongoing obligations in accordance with MiFID II and RTS 17 as further described in the present document.

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4.1 Confirmation of compliance of ongoing obligations

Issuers commit by the application form and the relevant letter of undertaking to comply – amongst others – with the following obligations:

a) Comply with the relevant and applicable Union law as well as any of their implementing measures;

b) Comply with the relevant and applicable provisions prescribed by the LuxSE's R&R;

c) Maintain a legal position and structure which is compliant with applicable legislation and regulations relating to its incorporation and operation under its articles of association;

d) Maintain the securities legal position compliant with the relevant applicable legislation and regulations.

The application form, along with the letter of undertaking, both dully signed, are a prerequisite for the securities to be admitted to trading on LuxSE's markets.

4.2 Corporate events and relevant checks and controls

In accordance with Union law and the LuxSE's R&R, issuers are obliged to communicate and – where applicable – disclose, ahead of corporate events affecting the issuer or its securities, any information that is deemed necessary for investor protection and/or to facilitate the due and proper operation of the market.

Corporate events provided directly by the issuers are reviewed and recorded by the relevant LuxSE's team to reflect them on the securities which are admitted to trading on LuxSE's markets.

In addition, the LuxSE performs daily checks based on multiple national and international sources in order to obtain information about the announcements relating to corporate events and monitor them appropriately.

Ad-hoc and ongoing requirements, checks and controls

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4.3 Disclosure of information and dedicated services

In order to facilitate compliance by issuers with their obligations, LuxSE provides issuers with dedicated disclosure, filing, distribution and storage services, as follows:

a) **OAM** – Upon regulatory delegation, LuxSE provides issuers, which have selected Luxembourg as their home Member State, with a storage service for documents containing regulated information. These documents are centrally archived and publicly accessible via the LuxSE's website.

b) **FNS** – Issuers can use LuxSE's Financial News Service to fulfil their obligations to effectively disseminate information. Issuers can publish two types of notices:

- Regulated information notices; and

- Other notices.

All notices are published on the LuxSE's website and simultaneously distributed to data vendors and the media.

c) **FIRST** – LuxSE provides issuers with FIRST, the Financial Instruments Reporting Services Tool, helping issuers with their ongoing obligations in terms of storage with the OAM, filing documents to the financial regulator and disseminating information to the public.

4.4 Procedure to verify compliance of issuers with their ongoing disclosure obligations and supervision of the market activity

In order to make sure that issuers comply with their obligations, the LuxSE performs regular controls regarding the disclosure activity of the issuers admitted to trading to one of the markets operated by the LuxSE.

Based on information available through multiple data sources, the LuxSE verifies whether issuers disseminate relevant information relating to the issuer itself or its securities that it is obliged to disclose in accordance with the applicable rules.

The LuxSE checks whether such disclosure is operated in accordance with the processes set out in Union law and the LuxSE's R&R. These checks are carried out on the basis of a sample of issuers selected by an internal process at the LuxSE. The sample is renewed on a regular basis to make sure that a certain number of issuers is periodically covered by the verification process.

As regards the trading activity on the markets operated by the LuxSE, a dedicated team is in charge of monitoring the activity on an ongoing and ex-post basis (the team analyses live trades as well as executed trades). The monitoring activity of this team includes, amongst other processes, the search for breaches of the trading rules, the identification of operations that could disrupt or manipulate the market or any other abuse that could endanger the proper operation of the market. Their tasks also include the reporting of any suspicious transactions or orders to the competent authority.

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Internal Auditor checks and controls

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The Internal Auditor of the LuxSE performs periodic checks and controls on all functions of LuxSE.

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According to the LuxSE's R&R, LuxSE may take any appropriate and proportionate measures with respect to the securities admitted to trading to facilitate the fair, orderly, and efficient operation of its markets, as follows:

a) Suspension – The LuxSE may decide to suspend from trading any security that no longer complies with, or whose issuer no longer conforms to, the relevant provisions of LuxSE's R&R, except if such a measure is likely to significantly harm the interests of investors or to compromise the orderly operation of the relevant market.

b) Transfer – The LuxSE may decide to transfer a security admitted to trading on its Regulated Market to the Euro MTF, when an issuer does not comply with the relevant regulatory provisions.

c) Delisting – The LuxSE may decide to delist a security from trading on a market when it is of the firm belief that, for specific reasons, the normal and consistent market for this security cannot be maintained.

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