

Filters applied:

Legal act = Prospectus Regulation 2017/1129

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ESMA_QA_975	16-07-2021
ESMA_QA_989	05-05-2021
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ESMA_QA_915	12-07-2019
ESMA_QA_914	12-07-2019
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ESMA_QA_974	27-03-2019
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ESMA_QA_2576

Submission Date

19/06/2025

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Publication of prospectus

Historic Question Reference

ESMA, Questions and Answers on the Prospectus Regulation, version 12 (the “ESMA Prospectus Q&A”), Qs 4.2 and 15.7.

Additional Legal Reference

The (Swedish) Act (2019:414) with supplementary provisions to the EU Prospectus Regulation (the “Swedish Supplementary Act”), Ch. 2, Sec. 1.; Regulation (EU) 2024/2809 (the “Listing Act”)

Subject Matter

The calculation of offers of warrants and/or units consisting of warrants and shares in relation to exemptions from the prospectus obligation in the Prospectus Regulation.

Question

1. Member State incorporated exemptions in accordance with Article 3(2) item (b) of the Prospectus Regulation. Should a rule, incorporated by a Member State in accordance with Article 3(2) item (b) of the Prospectus Regulation, granting an exemption from the prospectus obligation be interpreted so that the “total consideration” of an offer of warrants only includes the consideration paid in conjunction with the initial offer, and not the strike price of the underlying securities?;

2. Offers of warrants as a part of units. How should the phrase “total consideration” be interpreted in relation to offers of units consisting of shares (offered against consideration) and warrants (offered free of charge)? Should the “total consideration” only include the consideration for the shares and thus exclude the strike price of the underlying securities?; and

3. The warrants’ exercise period. Does the date of the occurrence of the warrants’ exercise period, in relation to the date of the initial offer, affect this interpretation and how the calculation of the “total consideration” is to be conducted? Specifically, does it have an impact on how the calculation is to be conducted if the exercise period occurs within the 12-month period? Is there any difference in how you should perform the calculation if the exercise period occurs within either 3, 6, 9 or 12 months from the date of the initial offer? Does it make any difference whether the warrants are offered in the form of a unit?

ESMA_QA_2522

Submission Date

07/04/2025

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Initial Public Offer/IPO

Subject Matter

New exemptions for fungible securities in Prospectus Regulation.

Question

What are the requirements for the statement of continuous compliance with reporting and disclosure obligations under IV. in Annex IX to the Prospectus Regulation? More specifically, (i) is it possible to add any disclaimers to this

statement, (ii) when is an issuer considered to have 'continuous compliance', (iii) to which time period should the statement pertain (i.e. does the statement need to cover the entire period that the issuer's securities have been admitted to trading) and (iv) are issuers allowed to use an 'exempted document' drawn up using Annex IX if this statement is not 'clean'?

ESMA_QA_2521

Submission Date

07/04/2025

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Initial Public Offer/IPO

Subject Matter

New exemptions for fungible securities in Prospectus Regulation.

Question

Does the exemption in Article 1(5)(ba) PR concern all exchange offers or only exchange offers falling within the scope of the Takeover Directive?

ESMA_QA_2520

Submission Date

07/04/2025

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Public offer

Subject Matter

New exemptions for fungible securities in Prospectus Regulation.

Question

When applying the exemptions in Article 1(4)(da) and (db) as well as Article 1(5)(ba), when is an issuer considered to be subject to a restructuring or to insolvency proceedings?

ESMA_QA_2454

Submission Date

05/03/2025

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Content of prospectus

Additional Legal Reference

Annex I to the Prospectus Regulation and Commission Delegated Regulation (EU) 2019/980 of 14 March 2019

Subject Matter

Historical financial information - if we intend to prepare and file a Prospectus should we, acting as an issuer of equity securities (shares), prepare historical financial

information covering the last three or two financial years?

Question

Annex I to the Prospectus Regulation was amended by Regulation 2024/2809 and introduced reduced time periods for historical financial information. However, Commission Delegated Regulation 2019/980 remains in force and requires longer time periods for historical financial information. Do the time periods in Annex I now apply or do those in Commission Delegated Regulation 2019/980 continue to apply?

ESMA Answer

18-06-2025

Original language

The time periods for historical financial information in Commission Delegated Regulation 2019/980 continue to apply until appropriate changes are made to give full effect to amendments introduced by Regulation 2024/2809. Article 13(1) of the Prospectus Regulation as amended by Regulation 2024/2809 requires the Commission to adopt delegated acts defining the specific information to be included in a prospectus¹. The adoption of those delegated acts is necessary to give full effect to the reduced time periods as well as other changes based on Regulation 2024/2809.

¹ Article 1(10)(a)(i) (Amendments to Regulation (EU) 2017/1129) of REGULATION (EU) 2024/2809 states: “By 5 June 2026, the Commission shall adopt delegated acts in accordance with Article 44 to supplement this Regulation regarding the

standardised format and standardised sequence of the prospectus, the base prospectus and the final terms, and the schedules defining the specific information to be included in a prospectus, including LEIs and ISINs, avoiding duplication of information when a prospectus is composed of separate documents.”

ESMA_QA_2367

Submission Date

09/12/2024

Status: Awaiting Answer

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Public offer

Additional Legal Reference

Annex IX of the Listing Act

Subject Matter

The application of the Annex IX requirements to secondary issuances of existing shares

Question

How should an offeror undertaking a secondary issuance of existing shares and using the exemptions for fungible securities set out in Article (1), paragraph 4, points (da) and (db) of the Prospectus Regulation (amended by the Listing Act) provide the information required by Annex IX of the Listing Act, in those cases in which the issuer is not involved in the offer or the offeror is not involved in the ongoing management of the issuer?

Please provide guidance on how the issuer's declaration and risks statements set out in Annex IX shall be managed by the offeror. In particular the requirements include:

Statement of continuous compliance with reporting and disclosure obligations throughout the period of being admitted to trading, including under Directive 2004/109/EC, where applicable, Regulation (EU) No 596/2014 and, where applicable, Commission Delegated Regulation (EU) 2017/565.

Statement that at the time of the offer the issuer is not delaying the disclosure of inside information pursuant to Regulation (EU) No 596/2014.

Risks factors specific to the issuer

ESMA_QA_2366

Submission Date

09/12/2024

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Public offer

Additional Legal Reference

Article 1, paragraph 4, points (da) and (db)

Subject Matter

Listing Act implementation for secondary issuances of existing shares

Question

Are the exemptions from the obligation to produce a prospectus for offers of fungible securities that are set out in Article (1), paragraph 4, points (da) and (db) of the Prospectus Regulation (as amended by the Listing Act) also applicable to secondary issuances of existing shares, provided that all other requirements are met?

NB: Secondary issuances of existing shares are those initiated by an offeror (and not an issuer), as described in Article 14, 1st paragraph, point c) and Article 15, 1st paragraph, point d) of the Prospectus Regulation (prior to its amendment by the Listing Act). A concrete example are the offers of existing NBG shares realised in 2023 and 2024 under the simplified prospectus regime for secondary issuance. Such offers do not involve any increase in share capital.

ESMA_QA_2260

Submission Date

21/08/2024

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Public offer

Subject Matter

Future incorporation by reference of financial information, which will be permitted once Article 19 PR is amended by the Listing Act

Question

Where shall the issuer incorporate by reference new annual or interim financial information in the case of a base prospectus drawn up as separate documents or in

the case of a standalone tripartite prospectus? For how long this information may be incorporated by reference?

ESMA Answer

06-06-2025

Original language

Answer provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation

Where the base prospectus is drawn up as separate documents or in the case of a standalone tripartite prospectus, new annual or interim financial information shall be incorporated by reference in the registration document. That information can be incorporated by reference for as long as the base prospectus or a standalone tripartite prospectus remains valid.

Disclaimer:

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudice the position that the European Commission might take before the Union

and national courts.

ESMA_QA_2259

Submission Date

21/08/2024

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Public offer

Subject Matter

Future incorporation by reference of financial information, which will be permitted once Article 19 PR is amended by the Listing Act

Question

How does incorporation of new annual or interim financial information by reference in a base prospectus interact with the general requirement to produce a supplement

under Article 23 of the Prospectus Regulation?

ESMA Answer

06-06-2025

Original language

Answer provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation

The obligation to produce a supplement under Article 23 of the Prospectus Regulation shall not apply to new annual or interim financial information when it is incorporated by reference under Article 19(1b).

Disclaimer:

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudice the position that the European Commission might take before the Union and national courts.

ESMA_QA_2258

Submission Date

21/08/2024

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Public offer

Subject Matter

Future incorporation by reference of financial information, which will be permitted once Article 19 PR is amended by the Listing Act

Question

Information that is incorporated pursuant to Article 19(1b) of the Prospectus Regulation will not have been considered by an NCA during the prospectus scrutiny

and approval process. How will that interact with the NCA's approval statement which will be included in the base prospectus at the time of approval?

ESMA_QA_2257

Submission Date

21/08/2024

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Public offer

Subject Matter

Future incorporation by reference of financial information, which will be permitted once Article 19 PR is amended by the Listing Act

Question

How should issuers comply with the requirement to include a hyperlink to new annual or interim financial information that will be incorporated by reference if such

information is not yet available at the time of approval of the base prospectus?

ESMA Answer

06-06-2025

Original language

Answer provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation

Where applicable, the base prospectus shall contain, in the relevant section, a hyperlink to where the new annual or interim financial information will be published.

Disclaimer:

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.

ESMA_QA_2256

Submission Date

21/08/2024

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Public offer

Subject Matter

Future incorporation by reference of financial information, which will be permitted once Article 19 PR is amended by the Listing Act

Question

Article 19(1b) of the Prospectus Regulation states that issuers may incorporate new annual or interim financial information by reference that has been published

electronically.

If an issuer plans to use this facility how should this fact be reflected in the base prospectus?

ESMA_QA_2255

Submission Date

21/08/2024

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Public offer

Subject Matter

Future incorporation by reference of financial information, which will be permitted once Article 19 PR is amended by the Listing Act

Question

Please clarify the scope of 'financial information' to which Article 19(1b) of the Prospectus Regulation applies.

ESMA Answer

06-06-2025

Original language

Answer provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation

“Financial information” referred to in Article 19(1b) of Regulation (EU) 2017/1129 as amended by Regulation (EU) 2024/2809, shall be understood as including any of the information under Article 19(1)(d), (e), (f), (g), (i) and (j).

Disclaimer:

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudice the position that the European Commission might take before the Union and national courts.

ESMA_QA_2254

Submission Date

21/08/2024

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Public offer

Subject Matter

The interaction between the EU Green Bond Regulation (EuGBR) and the Prospectus Regulation

Question

Article 14 of Regulation (EU) 2023/2631 on European green bonds ('EuGB Regulation') requires certain issuers to publish a prospectus approved under

Regulation (EU) 2017/1129 (the 'Prospectus Regulation') in order to use the designation of 'European Green Bond' or 'EuGB'. Article 10 of the EuGB Regulation sets out the requirements relating to the completion of an EuGB factsheet, while Article 15 sets out requirements relating to the publication of the EuGB factsheet.

In this regard, is it possible to publish the EuGB factsheet prior to the publication of a prospectus approved under the Prospectus Regulation? Moreover, is it possible to advertise a European Green Bond prior to the approval and publication of the prospectus? Please clarify the meaning 'use of the designation' in this context.

ESMA Answer

06-06-2025

Original language

Answer provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation

Article 15(1)(a) – (c) of the EuGB Regulation provides that issuers of European Green Bonds shall, before the bond is issued, publish: the completed factsheet; the pre-issuance review (external review) of that factsheet; and a hyperlink to the website where the prospectus can be consulted (in cases where a prospectus is published pursuant to the Prospectus Regulation). The provision does not prevent issuers from publishing those individual documents at different times before issuance. Therefore, the EuGB factsheet may be published before the prospectus is approved and/or published, provided that the information contained therein is not misleading. It is the responsibility of the issuer to ensure that the information in the EuGB factsheet is clear and accurate regarding the status of the bond and the

documentation required for issuance.

Given that issuers of European Green Bonds are required to publish a prospectus according to the Prospectus Regulation (in cases where a prospectus is required), it is also possible for them to publish advertisements under the conditions set out in that Regulation, as well as in Commission Delegated Regulation (EU) 2019/979, notably Chapter IV thereof. In this respect, Article 22 of the Prospectus Regulation indicates that advertisements relating to an offer of securities to the public or an admission to trading on a regulated market prior to the approval of the prospectus are permitted, provided that the principles contained in paragraphs 2 to 5 of that Article are complied with. In particular, advertisements must state that a prospectus has been or will be published and indicate where investors are or will be able to obtain it, and they must be clearly recognisable as such.

Under Article 3 of the EuGB Regulation, the designation of “European Green Bond” and “EuGB” is to be used only for bonds that comply with the requirements set out in Title II of the EuGB Regulation. Therefore, the designation begins when the European Green Bond is issued. In line with standard market practice, issuance takes place at settlement.

Documents published before the issuance of the bonds shall not mislead investors on the possible outcome of the external review and the examination of the draft prospectus by competent authorities. Furthermore, the publication of an EuGB factsheet and/or an advertisement before the issuance of a European Green Bond is not to be regarded as a use of the designation of “European Green Bond” and “EuGB”.

It is the responsibility of the issuer to determine when the elements referred to in Article 15(1)(a) – (c) of the EuGB Regulation are published, so long as they are published before issuance of the European Green Bond. It is the responsibility of the issuer to ensure that investors are in a position to make their investment decision based on the information in the EuGB factsheet, the pre-issuance review and the prospectus.

Where an EuGB factsheet relates to more than one European Green Bond issuance, in accordance with Article 10(2) of the EuGB Regulation, at the time of publication it may not necessarily include information related to later issuances.

Disclaimer:

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.

ESMA_QA_1985

Submission Date

19/09/2023

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Public offer

Subject Matter

Combining exemptions

Question

Can the exemption in Article 3(2) of the PR be combined with the exemptions in Article 1(4) PR?

ESMA_QA_1718

Submission Date

01/09/2023

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Publication of prospectus

Historic Question Reference

N/A

Additional Legal Reference

Articles 1(4), 1(5) and 1(6) of the Prospectus Regulation

Subject Matter

Scope of the word "shares" in certain exemptions from the obligation to publish a prospectus in Articles 1(4), 1(5) and 1(6) of the Prospectus Regulation.

Question

What is the meaning of the term "shares" in Articles 1(4), 1(5) and 1(6) of the Prospectus Regulation? More specifically, does this term include depository receipts for shares issued with the cooperation of the issuer of the underlying shares?

ESMA Answer

12-09-2024

Original language

Answer provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation

Shares and depository receipts are two different types of transferable securities as defined in point (44) of Article 4(1) of Directive 2014/65/EU. Articles 1(4), 1(5) and 1(6) of the Prospectus Regulation specify which specific types of securities are concerned by each specific exemption to the obligation to publish a prospectus set out in Article 3(1) of the Prospectus Regulation. Since these provisions contain exceptions to the general rule, they should be strictly interpreted. Exemptions regarding shares should not be construed as also covering depository receipts issued with the cooperation of the issuer of the underlying shares.

Disclaimer:

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.

ESMA_QA_1716

Submission Date

29/08/2023

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Public offer

Subject Matter

Application of Level 3 guidance to EU Recovery Prospectuses

Question

Does the Level 3 guidance published by ESMA apply to the EU Recovery Prospectus?

ESMA Answer

16-07-2021

Original language

[ESMA 31-62-1258 Prospectuses Q&A 18.1]

Yes.

As is the case for other prospectuses referred to in the PR¹, the Level 3 guidance published by ESMA² generally applies to EU Recovery Prospectuses². However, where a requirement in the PR is not applicable to the EU Recovery Prospectus, the related Level 3 guidance published by ESMA would not be relevant.

For example, the Guidelines on working capital statements or pro forma financial information⁴ should apply to the EU Recovery Prospectus in a similar fashion to how they apply in the context of a standard prospectus. This is because there is also a requirement to include a working capital statement in an EU Recovery prospectus⁵ and pro forma financial information where relevant. Similarly, the risk factor Guidelines⁶ would apply as risk factor disclosure is required in the EU Recovery Prospectus⁷.

1. For example, standard, EU Growth or secondary issuance prospectuses.
2. ESMA's Level 3 guidance on prospectuses is generally available on the following webpage. For example, Q&As and Guideline.
3. The EU Recovery Prospectus as referred to in Regulation (EU) 2021/337 of the European Parliament and of the Council of February 2021 amending Regulation

(EU) 2017/1129 as regards the EU Recovery prospectus and targeted adjustments for financial intermediaries and Directive 2004/109/EC as regards the use of the single electronic reporting format for annual financial reports, to support the recovery from the COVID-19 crisis.

4. See the Guidelines on disclosure requirements under the Prospectus Regulation.

5. See Annex Va (Minimum information to be included in the EU Recovery Prospectus) item XII.

6. See the Guidelines on Risk Factors under the Prospectus Regulation.

7. See Annex Va (Minimum information to be included in the EU Recovery Prospectus) item IV.

ESMA_QA_1715

Submission Date

29/08/2023

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Public offer

Subject Matter

Advertisements

Question

How should the requirement to disseminate an amended advertisement through at least the same means as the previous advertisement (cf. Article 15(3) of Commission Delegated Regulation 2019/979) be applied when the advertisement in

question is a roadshow?

ESMA Answer

31-03-2021

Original language

[ESMA 31-62-1258 Prospectuses Q&A nr 17.1]

If the advertisement was orally delivered as part of a roadshow there is no obligation to hold a new roadshow to disseminate an amended advertisement. The exemption for orally disseminated advertisements should also apply to roadshows in which visual or printed elements (e.g. slides, handouts) are used, as the overall nature of the advertisement is that it is delivered in an oral context.

However, ESMA emphasises that the general requirement to amend the roadshow advertisement still applies. Therefore, the issuer, offeror or person asking for admission to trading on a regulated market should disseminate an amended version of the information provided in the roadshow through the means which it considers most suitable to reach the participants of the roadshow. Depending on the type of roadshow conducted and the nature of the participants, this might for example be by way of a press release, publication on the website of the issuer, offeror or person asking for admission to trading or by direct correspondence with the roadshow participants.

ESMA_QA_1462

Submission Date

14/07/2023

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Level 2 Regulation

Regulation 2019/980 on the format, content, scrutiny and approval of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market

Topic

Secondary issuance prospectus

Additional Legal Reference

Article 14(1)d of the Prospectus Regulation

Subject Matter

Which annexes to the Commission Delegated Regulation (EU) 2019/980, i.e. Annex 3 and Annex 12 or Annex 1 and Annex 11, should be used to prepare the simplified prospectus referred to in Article 14 of the Prospectus Regulation in the case specified in Arti

Question

Which annexes to the Commission Delegated Regulation (EU) 2019/980, i.e. Annex 3 and Annex 12 or Annex 1 and Annex 11, should be used to prepare the simplified prospectus referred to in Article 14 of the Prospectus Regulation in the case specified in Article 14(1)(d) of the Prospectus Regulation?

Explanation: Pursuant to Article 14(1)(d) of the Prospectus Regulation a simplified prospectus under simplified disclosure regime for secondary regime may be drawn up by, among others, issuers whose securities have been offered to the public and admitted to trading on an SME growth market continuously for at least two years, and who have fully complied with reporting and disclosure obligations throughout the period of being admitted to trading, and who seek admission to trading on a regulated market of securities fungible with existing securities which have been previously issued.

However, we note that certain competent authorities in the EU require that a simplified prospectus in the case referred to in Article 14(1)(d) of the Prospectus Regulation, i.e. the issuers transitioning from the SME Growth Market and meeting conditions specified therein shall prepare the Prospectus in accordance with Annex 1 and Annex 11, i.e. in accordance with full disclosure regime with the exception that only financial information would be limited as in the simplified prospectus.

Therefore, we kindly request the European Securities Market Authority to clarify which annexes to the Commission Delegated Regulation (EU) 2019/980 should be required to prepare a simplified prospectus referred to in Article 14 of the Prospectus Regulation in the case specified in Article 14(1)(d) of the Prospectus Regulation.

ESMA_QA_971

Submission Date

26/05/2023

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Registration Document

Subject Matter

Updating information in a universal registration document before it is part of a prospectus

Question

How should information in a universal registration document be updated before it is a constituent part of a prospectus?

ESMA Answer

27-03-2019

Original language

[ESMA62-31-1258 Q&A 3.2]

According to Article 9(10) of the Prospectus Regulation, the information in a universal registration document can only be updated via an amendment, under Articles 9(7) and 9(9) of the Prospectus Regulation, in the period before the universal registration document forms a constituent part of a prospectus. This amendment is filed with the competent authority that approved the universal registration document or where the universal registration document was filed. The filing of this amendment shall not require an approval by the competent authority until the URD becomes part of a prospectus or is passported.

Amendments to a universal registration document, which has been filed but not approved

Where an issuer has filed a universal registration document without prior approval and wishes that such universal registration document (and any amendments thereto) form part of a prospectus, Article 10(3) of the Prospectus Regulation states that the entire documentation (including any amendments) shall be subject to approval. This process ensures that the universal registration document and any amendments are approved before their use as a constituent part of a prospectus.

In addition, a filed universal registration document and any amendments thereto must be approved before they can be passported to a competent authority in another Member State.

Amendments to an approved universal registration document, which is not a constituent part of a prospectus

Where a universal registration document has already been approved, any amendments that were filed since the approval of the universal registration document will need to be approved before that universal registration document (and the amendments thereto) can be used as a constituent part of a prospectus. In addition, a universal registration document and any amendments thereto must be approved before they can be passported to a competent authority in another Member State.

Amendments to an approved universal registration document after passporting, but before it is a constituent part of a prospectus

Where a universal registration document has been approved and passported but is not yet a constituent part of a prospectus, then amendments to that universal registration document would be subject to separate approval in accordance with the second sub-paragraph of Article 10(3) of the Prospectus Regulation before a prospectus, with the universal registration document as a constituent part, can be approved by the competent authority of another Member State. After approval, the amendment should be passported to the same competent authorities as the universal registration document had been passported in accordance with Article 26(2) of the Prospectus Regulation.

ESMA_QA_903

Submission Date

11/05/2023

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Public offer

Subject Matter

Transferable securities

Question

If shares are offered to the public under shareholders' agreement restricting the transferability of the shares, would this have an impact on the status of those shares as 'transferable securities'?

ESMA Answer

31-03-2021

Original language

[ESMA 31-62-1258 Prospectuses Q&A nr 14.12]

The definition of securities^[1] in the Prospectus Regulation refers to transferable securities as defined in MiFID II^[2]. In turn, the obligation to publish a prospectus pursuant to the Prospectus Regulation only applies to the offer or the admission to trading on a regulated market of securities that are transferable.

Commission Delegated Regulation 2019/98^[3] requires information in relation to restrictions on the free transferability of the securities (e.g. Annex 11, item 4.8) and information in relation to lock-up agreements of selling securities holders (e.g. Annex 11, item 7.4). Thus, while the ability to transfer a security may be reduced (e.g. on a contractual basis where there are selling restrictions applicable in a specific country, or in a situation where there is a lock-up agreement between an issuer and existing shareholders), it must be concluded that securities offered with certain restrictions remain "transferable securities" within the definition of securities in Article 2(a) of the Prospectus Regulation and, therefore, subject to the scope of the Prospectus Regulation.

Nevertheless, some other restrictions may be so broad that they result in the impossibility to consider the relevant securities as freely transferable and, therefore, outside the scope of the Prospectus Regulation.

When considering this question, NCAs should analyse on a case-by-case basis whether a class of securities that are subject to a restriction are transferable or not.

Disclaimer:

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudice the position that the European Commission might take before the Union and national courts.

[1] Article 2(a) of the Prospectus Regulation.

[2] Ibid "[...] transferable securities as defined in point (44) of Article 4(1) of Directive 2014/65/EU with the exception of money market instruments as defined in point (17) of Article 4(1) of Directive 2014/65/EU, having a maturity of less than 12 months".

[3] Commission Delegated Regulation (EU) 2019/980 of 14 March 2019 supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council as regards the format, content, scrutiny and approval of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Commission Regulation (EC) No 809/2004 (OJ L 166, 21.6.2019, p. 26).

ESMA_QA_835

Submission Date

03/02/2023

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Public offer

Subject Matter

Purchase via joint account

Question

Article 1(4)(d) of the prospectus regulation states:

"The obligation to publish a prospectus set out in Article 3(1) shall not apply to any

of the following types of offers of securities to the public: ...(d) an offer of securities addressed to investors who acquire securities for a total consideration of at least EUR 100 000 per investor, for each separate offer;"

May the purchase of securities by a joint account be considered as "one investor"? Let us assume that, in the context of an offer, a purchase for EUR 100,000 is executed for a joint account held by husband and wife. In such case, is the above mentioned condition of "at least EUR 100 000 per investor" still complied with?

ESMA Answer

03-02-2023

Original language

[ESMA 31-62-1258 Prospectuses Q&A 15.10]

Yes, as Article 1(4)(d) contains no condition regarding the mode of payment.

ESMA_QA_836

Submission Date

12/10/2022

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Public offer

Subject Matter

Prospectus exemption in connection with a takeover by means of an exchange offer

Question

What is the meaning of 'approval', as referred to in Article 1(6a), point (b), of Regulation (EU) 2017/1129? Is it an approval which follows a process similar to that envisaged in Commission Delegated Regulation (EU) 2019/980 for prospectuses,

or an approval which follows the process applied by relevant national supervisory authorities under Directive 2004/25/EC?

ESMA Answer

12-10-2022

Original language

[ESMA 31-62-1258 Prospectuses Q&A nr 15.9]

Answer provided by the European Commission.

It is considered that 'approval' as referred to in Article 1(6a), point (b), of Regulation (EU) 2017/1129 refers to the approval process applied by the relevant supervisory authorities designated in accordance with Directive 2004/25/EC and that have the competence, where applicable, to review the offer document under that directive.

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.

ESMA_QA_587

Submission Date

24/08/2022

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Level 3 Regulation

The Prospectus Regulation

Topic

Publication of prospectus

Additional Legal Reference

Art. 1. 4. (d) of the prospectus regulation (EU) 2017/1129

Subject Matter

securities bought by a joint account

Question

Art. 1. 4. (d) of the prospectus regulation states that "The obligation to publish a prospectus set out in Article 3(1) shall not apply to any of the following types of offers of securities to the public: ... (d) an offer of securities addressed to investors who acquire securities for a total consideration of at least EUR 100 000 per investor, for each separate offer;" Question: may the purchase of securities by a joint account be considered as "one investor"? Let us assume that, in the context of an offer, a purchase for EUR 100,000 is executed for a joint account held by husband and wife. In such case, is the above mentioned condition of "at least EUR 100 000 per investor" still complied with?

ESMA Answer

03-02-2023

Original language

[ESMA31-62-1258 Prospectuses Q&A 15.10]

Yes, as Article 1(4)(d) contains no condition regarding the mode of payment.

ESMA_QA_846

Submission Date

27/07/2021

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Content of prospectus

Subject Matter

Restrictions on the transferability of shares (ESMA31-62-1258 Q&A14.14)

Question

If shares are considered transferable securities, irrespective of the conditions of a shareholders' agreement restricting the transferability of those shares, should information in relation to the agreement be incorporated in the prospectus?

ESMA Answer

27-07-2021

Original language

Answer provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation

Yes. Commission Delegated Regulation (EU) 2019/980 ^[1] requires, in the prospectus for equity or non-equity securities, information in relation to any restrictions on the transferability of the securities (e.g. Annex 11, item 4.8) and, for equity securities only, information in relation to lock-up agreements of selling securities holders (e.g. Annex 11, item 7.4). In the Prospectus Regulation^[2], the definition of securities^[3] refers to transferable securities as defined in MiFID II^[4]. Where the shares are transferable securities, they fall under the definition of equity securities set out in Article 2(b) of the Prospectus Regulation^[5].

Disclaimer:

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudice the position that the European Commission might take before the Union and national courts.

^[1] Commission Delegated Regulation (EU) 2019/980 of 14 March 2019 supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council as regards the format, content, scrutiny and approval of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Commission

Regulation (EC) No 809/2004 (OJ L 166, 21.6.2019, p. 26).

[2] Regulation (EU) 2017/1129 of the European Parliament and of the Council on 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, and repealing Directive 2003/71/EC (OJ L 168, 30.6.2017, p. 12).

[3] Article 2(a) of the Prospectus Regulation.

[4] Ibid "[...] transferable securities as defined in point (44) of Article 4(1) of Directive 2014/65/EU with the exception of money market instruments as defined in point (17) of Article 4(1) of Directive 2014/65/EU, having a maturity of less than 12 months".

[5] "[...] shares and other transferable securities equivalent to shares in companies, as well as any other type of transferable securities giving the right to acquire any of the aforementioned securities as a consequence of their being converted or the rights conferred by them being exercised, provided that securities of the latter type are issued by the issuer of the underlying shares or by an entity belonging to the group of the said issuer".

ESMA_QA_845

Submission Date

27/07/2021

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Secondary issuance prospectus

Subject Matter

Secondary issuance prospectus for issuers listed on SME Growth markets (ESMA31-62-1258 Q&A 14.15)

Question

An issuer is listed on an alternative stock exchange (MTF) for 18 months. The alternative stock exchange changes its status to that of an SME Growth market. Is

the issuer immediately eligible to use a secondary issuance prospectus as per Article 14 PR? Or does the issuer have to be listed for 18 months on the exchange while it is categorised as an SME Growth market prior to being eligible?

ESMA Answer

27-07-2021

Original language

Answer provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation

The Prospectus Regulation (PR)^[1] enables, under certain conditions, issuers who have had securities admitted to trading on an SME growth market continuously for at least the last 18 months to use a simplified prospectus for a secondary issuance of securities to be offered to the public. The specific conditions to be fulfilled to benefit from the simplified prospectus are laid down in Article 14(1).

The need for a full prospectus is less acute for subsequent offers to the public made by an issuer listed on an SME Growth market, since part of the information required in a prospectus will be already publicly available for investors. This is because an issuer listed on an SME Growth market is subject to ongoing disclosure requirements under the Market Abuse Regulation^[2] and, as recalled in recital 49^[3] of the PR, appropriate ongoing disclosures established by the operator of the SME Growth market in accordance with MiFID II^[4].

In that regard, the SME Growth market regime is governed by the rules laid down in Article 33 of MiFID II and in Articles 77 to 79 of Commission Delegated Regulation

(EU) 2017/565^[5]. In particular, Article 78(2) of that Delegated Regulation lays down a comprehensive set of rules for the operator of an MTF that seeks registration as an SME Growth market. Such rules encompass, amongst others, objective and transparent criteria for initial and ongoing admission to trading of financial instruments, rules for the publication of an admission document (where a prospectus is not required), rules on ongoing periodic financial reporting (e.g. annual financial reports) and rules on the storage and dissemination to the public of regulatory information concerning the issuer.

Therefore, it is considered that an issuer whose securities have been admitted to trading continuously for at least the last 18 months on an MTF that has been registered as an SME Growth market is eligible to immediately use a simplified prospectus for secondary issuances, provided that:

1. at the time of the approval of the simplified prospectus for secondary issuances, that MTF is registered as an SME Growth market in accordance with MiFID II;
2. for the entire period of at least the last 18 months during which the issuer's securities have been admitted to trading on the MTF, that MTF has complied with the rules laid down in Article 78(2) of Commission Delegated Regulation (EU) 2017/565;
3. the issuer fulfils the conditions laid down in Article 14(1), point (a)^[6] or (b)^[7] of the PR.

Disclaimer:

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudice the position that the European Commission might take before the Union and national courts.

[1] Regulation (EU) 2017/1129 of the European Parliament and of the Council on 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, and repealing Directive 2003/71/EC (OJ L 168, 30.6.2017, p. 12).

[2] Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173, 12.6.2014, p. 1).

[3] “The simplified disclosure regime for secondary issuances should be available for offers to the public by issuers whose securities are traded on SME growth markets, as their operators are required under Directive 2014/65/EU of the European Parliament and of the Council (2) to establish and apply rules ensuring appropriate ongoing disclosure”.

[4] Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p.349).

[5] Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (OJ L 87, 31.3.2017, p. 1).

[6] “[...] issuers whose securities have been admitted to trading on a regulated market or an SME growth market continuously for at least the last 18 months and who issue securities fungible with existing securities which have been previously issued;”.

[7] “[...] without prejudice to Article 1(5), issuers whose equity securities have been admitted to trading on a regulated market or an SME growth market continuously for at least the last 18 months and who issue non-equity securities or securities giving access to equity securities fungible with the existing equity securities of the issuer already admitted to trading;”.

ESMA_QA_990

Submission Date

27/07/2021

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Public offer

Subject Matter

Home Member State - Choice of the home Member State

Question

An issuer, following Article 2(m)(ii) of the PR, chooses as home Member State for the approval of its base prospectus a Member State different than that where it has its registered office. Is the base prospectus approved by the competent authority of

the chosen home Member State valid to make offers and/or admissions to trading exclusively in countries different than the home (i.e. no offer or admission is made in the home)? For example: an issuer that has its registered office in Finland, following Article 2(m)(ii), chooses Cyprus as Home Member State for the approval of its base prospectus. Is the base prospectus approved by Cyprus valid to make offers and/or admissions to trading exclusively in countries different than Cyprus (i.e. no offer or admission is made in Cyprus)?

ESMA Answer

27-07-2021

Original language

[ESMA 31-62-1258 Prospectus Q&A 6.3]

Answer provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation

Article 2(m)(ii) of the Prospectus Regulation^[1] allows, for certain types of non-equity securities, to choose the home Member State amongst the Member State where the issuer has its registered office, or where the securities were or are to be admitted to trading on a regulated market or where the securities are offered to the public, at the choice of the issuer, the offeror or the person asking for admission to trading on a regulated market. In the case of a base prospectus, the issuer should have a reasonable expectation to make an issue under the programme which will be admitted to trading or offered to the public in the home Member State that it has chosen (in the example, Cyprus) and it must do so within the 12 months of validity of the base prospectus. Once a base prospectus has been approved, it is valid for all issues made under it irrespective whether such issues will be admitted to trading

or offered to the public in the home Member State. However, if the issuer fails to do at least one offer or admission to trading in the chosen home Member State during the 12 months validity of the base prospectus, the issuer will not be in compliance with Article 2(m)(ii) and the competent authorities of the home and host Member States may take appropriate action (for example, sanctions in accordance with Article 38 of the Prospectus Regulation as implemented into their national legislation).

Disclaimer:

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudice the position that the European Commission might take before the Union and national courts.

[1] Regulation (EU) 2017/1129 of the European Parliament and of the Council on 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, and repealing Directive 2003/71/EC (OJ L 168, 30.6.2017, p. 12).

ESMA_QA_981

Submission Date

27/07/2021

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Public offer

Subject Matter

Offer of securities to the public

Question

Is the simple indication of secondary market prices to be considered an offer to the public? For example: an issuer's securities are admitted to trading on a regulated market X in Member State A. The issuer regularly publishes secondary market

prices of its securities on market X on its website. In compliance with the requirements of Article 1(5)(j), points (i) to (vi) of the Prospectus Regulation, the issuer applies for the admission of its securities on another regulated market Y in Member State B without publishing a prospectus. After the completion of the issuer's dual listing, secondary market prices of the issuer's securities on both markets are in the public domain, e.g. by way of publication on the relevant stock exchanges' websites. Is the issuer allowed to also publish all secondary market prices, i.e. regulated market X and regulated market Y prices, on its website besides information about its business and security identification numbers without publishing a prospectus?

ESMA Answer

27-07-2021

Original language

[ESMA31-625-1258 Prospectus Q&A 4.5]

Answer provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation

In general, the simple indication of secondary market prices should not be considered an offer of securities to the public unless they are accompanied by a communication constituting an offer of securities to the public or unless there are additional circumstances which might altogether amount to an offer of securities to the public, in accordance with the definition laid down in the Prospectus Regulation [\[1\]](#), Article 2(d)[\[2\]](#). This interpretation is supported by recital 14[\[3\]](#) of the Prospectus Regulation, according to which the publication of bid and offer prices is not to be regarded in itself as an offer of securities to the public and therefore it does not

require per se the publication of a prospectus. In the case described above, the issuer should be allowed to repeat on its own website secondary market prices of its securities trading on regulated markets that are published by the relevant stock exchanges along with securities identification numbers and factual information about its business. Such publication does not necessarily lead to an offer of securities to the public. However, the very specific elements of each situation should be analysed on a case by case basis.

Disclaimer:

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudice the position that the European Commission might take before the Union and national courts.

[1] Regulation (EU) 2017/1129 of the European Parliament and of the Council on 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, and repealing Directive 2003/71/EC (OJ L 168, 30.6.2017, p. 12).

[2] Ibid "[...] a communication to persons in any form and by any means, presenting sufficient information on the terms of the offer and the securities to be offered, so as to enable an investor to decide to purchase or subscribe for those securities. This definition also applies to the placing of securities through financial intermediaries".

[3] Ibid "The mere admission of securities to trading on an MTF or the publication of bid and offer prices is not to be regarded in itself as an offer of securities to the public and is therefore not subject to the obligation to draw up a prospectus under this Regulation. A prospectus should only be required where those situations are accompanied by a communication constituting an 'offer of securities to the public' as defined in this Regulation".

ESMA_QA_838

Submission Date

27/07/2021

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Public offer

Subject Matter

Redeemable debt securities

Question

Do redeemable debt securities (cases where the issuer has the right to redeem the security before maturity) fall under the scope of Article 1(4), point (j) of the Prospectus Regulation?

ESMA Answer

27-07-2021

Original language

Answer provided by the European Commission (Published as Prospectuses Q&A 15.8)

Article 1(4), point (j), of the Prospectus Regulation [1] sets out an exemption from the obligation to publish a prospectus, under certain conditions, for an offer to the public of non-equity securities issued in a continuous or repeated manner by a credit institution. One of the aforementioned conditions is that those securities do not give a right to subscribe for or acquire other types of securities and are not linked to a derivative instrument. It is considered that such reference to a derivative instrument refers only to a derivative component that affects the right of the investor and not to the risk hedging of the issuer. Therefore, the fact that in this type of securities the issuer enters into a derivative contract in order to cover its risk does not exclude them from the scope of Article 1(4), point (j).

The same consideration relates to Article 1(5), point (i), first subparagraph, of the Prospectus Regulation.

Disclaimer:

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudice the position that the European Commission might take before the Union and national courts.

[1] Regulation (EU) 2017/1129 of the European Parliament and of the Council on 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, and repealing Directive 2003/71/EC (OJ L 168, 30.6.2017, p. 12).

ESMA_QA_837

Submission Date

27/07/2021

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Public offer

Subject Matter

Offers of Warrants

Question

For offers of warrants (and other derivative securities) how should 'total consideration' be calculated in respect of the Prospectus Regulation thresholds of EUR 100 000 (Article 1(4), point (d)) and EUR 1 000 000 (Article 1(3))? Should only

the consideration for the warrants (if any) be counted, or should the strike price for the underlying securities be added?

ESMA Answer

27-07-2021

Original language

Answer provided by the European Commission (Published as Prospectuses Q&A 15.7)

Article 1(3) of the Prospectus Regulation [1] refers to an offer of securities to the public with a total consideration in the Union of less than EUR 1 000 000, to be calculated over a period of 12 months. In the case of an offer of warrants, it is considered that the total consideration referred to in Article 1(3) relates to the total consideration for the warrants (i.e. ‘the securities offered’) and therefore the strike price for the underlying securities is not to be taken into account.

To the same extent, for Article 1(4), point (d), of the Prospectus Regulation [2], it is considered that the total consideration as referred to in that Article relates to the total consideration for the warrants and therefore the strike price for the underlying securities is not to be taken into account.

[1] “[...] this Regulation shall not apply to an offer of securities to the public with a total consideration in the Union of less than EUR 1 000 000, which shall be calculated over a period of 12 months;”

[2] “[...] an offer of securities addressed to investors who acquire securities for a total consideration of at least EUR 100 000 per investor, for each separate offer;”

Disclaimer

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudice the position that the European Commission might take before the Union and national courts.”

ESMA_QA_999

Submission Date

27/07/2021

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Financial reporting

Subject Matter

Profit Estimate

Question

How should the words "for which results have not yet been published" in Article 1(c) of Commission Delegated Regulation (EU) 2019/980 be understood?

ESMA Answer

27-07-2021

Original language

[ESMA31-62-1258 Prospectuses Q&A 7.6]

Answer provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation

In relation to the definition of ‘profit estimate’, laid down in of Commission Delegated Regulation (EU) 2019/980^[1], Article 1(c)^[2], the publication of results for an annual financial period which has expired and “for which results have not been published” means the publication of the final figures as approved by the issuer.

^[1] Commission Delegated Regulation (EU) 2019/980 of 14 March 2019 supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council as regards the format, content, scrutiny and approval of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Commission Regulation (EC) No 809/2004 (OJ L 166, 21.6.2019, p. 26).

^[2] Ibid “[...] a profit forecast for a financial period which has expired and for which results have not yet been published”.

ESMA_QA_998

Submission Date

27/07/2021

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Financial reporting

Subject Matter

Interim Financial Information

Question

Should cumulative figures for the full financial year, disclosed in quarter four reports, be considered a profit estimate or interim financial information?

ESMA Answer

27-07-2021

Original language

[ESMA31-62-1258 Prospectuses Q&A 7.5]

Answer provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation

In relation to the definition of 'profit estimate', laid down in of Commission Delegated Regulation (EU) 2019/980^[1], Article 1(c)^[2], quarter four reports which contain unaudited results for an annual financial period should be considered as interim financial information.

Disclaimer:

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudice the position that the European Commission might take before the Union and national courts.

^[1] Commission Delegated Regulation (EU) 2019/980 of 14 March 2019 supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council as regards the format, content, scrutiny and approval of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Commission Regulation (EC) No 809/2004 (OJ L 166, 21.6.2019, p. 26).

[2] Ibid “[...] a profit forecast for a financial period which has expired and for which results have not yet been published”.

ESMA_QA_840

Submission Date

16/07/2021

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Public offer

Subject Matter

Application of Article 1(6b) (reverse acquisition)

Question

If a securities issuance leads to a reverse acquisition, should a prospectus be produced when the listed issuer is an empty shell and not a business?

ESMA Answer

16-07-2021

Original language

(Published as Prospectuses Q&A 15.5)

Yes, a prospectus should be produced.

When applying Article 1(6b) PR, the critical factor to consider is the information deficiency which can arise because of a reverse acquisition.^[1] If investors will be denied access to needed information otherwise contained in a prospectus, the exemptions referred to in Article 1(6b) should not be used to avoid producing one. Recital 13 of Regulation 2019/2115 amending the PR ^[2] emphasises the need to avoid such an information deficiency and the need for a prospectus.

Uncertainty in applying Article 1(6b) may arise due to the fact that paragraph B19 of IFRS 3, Business Combinations, states that the accounting acquiree ^[3] must meet the definition of a business for the transaction to be accounted for as a reverse acquisition. However, a distinction should be made between the purpose of paragraph B19 in the context of IFRS and its use in the PR area. While paragraph B19 has a specific application in IFRS ^[4], in the PR it helps to illustrate the mechanics of a reverse acquisition structure.

Accordingly, when applying Article 1(6b) in the context of the PR, stakeholders should use paragraph B19 as guidance to identify the mechanics of a reverse acquisition. Stakeholders should apply the guidance by analogy to situations which lead to similar outcomes ^[5]. If the outcome amounts to a reverse acquisition, no distinction should be made between transactions involving a listed empty shell and those involving a business as referred to in IFRS 3. This approach is aligned with Recital 13's^[6] clear rationale for requiring a prospectus.

[1] For clarity, the question arose in the context of 1(6b) which contains the following wording: The exemptions set out in point (g) of paragraph 4 and in point (f) of paragraph 5 shall apply only to equity securities in respect of which the transaction is not considered to be a reverse acquisition transaction within the meaning of paragraph B19 of IFRS 3, Business Combinations, and only in the following cases:

(a) the equity securities of the acquiring entity have already been admitted to trading on a regulated market prior to the transaction; or

(b) the equity securities of the entities subject to the division have already been admitted to trading on a regulated market prior to the transaction.” However, the Q&A can be applied by analogy where similar references to B19 of IFRS 3 arise, e.g. Article 1(6a).

[2] Regulation (EU) 2019/2115 of the European Parliament and of the Council of 27 November 2019 amending Directive 2014/65/EU and Regulations (EU) No 596/2014 and (EU) 2017/1129 as regards the promotion of the use of SME growth markets.

[3] The listed entity issuing the securities.

[4] Where the entity that issues securities (the legal acquirer) is identified as the acquiree for accounting purposes on the basis of the guidance in paragraphs B13_B18 of IFRS 3.

[5] For example, if a listed shell company issues securities to purchase an unlisted companies' shares and in turn is acquired by the unlisted company by virtue of offering those securities as consideration. The net effect being that a new entity becomes listed due to the mechanics of the transaction .

[6] Regulation (EU) 2019/2115 of the European Parliament and of the Council of 27 November 2019 amending Directive 2014/65/EU and Regulations (EU) No 596/2014 and (EU) 2017/1129 as regards the promotion of the use of SME growth markets.

ESMA_QA_839

Submission Date

16/07/2021

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Public offer

Subject Matter

Application of Article 3(2) PR

Question

Is it possible to make an offer of securities to the public in more than one Member State using the exemption in Article 3(2)?

If it is possible, what is the quantitative threshold which triggers the need for a

prospectus at an EU level. Is the threshold determined based on the issuer's home Member State, or should the issuer consider the lowest threshold of the individual Member States in which the offer is made?

ESMA Answer

16-07-2021

Original language

Yes, it is possible to make an offer of securities to the public in more than one Member State using this exemption using the lowest threshold of the individual Member States in which the offer is made.

The issuer should determine the lowest threshold for a prospectus by checking the thresholds set in the relevant individual Member States. ESMA has published a [document](#) containing the thresholds which are set by the Member States. However, issuers should familiarise themselves with the requirements in each Member State where the offer is made, because some Member States may have additional requirements such as the publication of documentation or the registration of the offering.

ESMA_QA_976

Submission Date

16/07/2021

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Registration Document

Subject Matter

Including information from a new RD or URD in a tripartite prospectus

Question

How should an issuer include information from a new RD or URD in an existing tripartite prospectus?

ESMA Answer

16-07-2021

Original language

[ESMA31-62-1258 Prospectus Q&A 3.5]

ESMA notes that it is not possible to replace the original RD or URD with a new RD or URD, because this would result in a new tripartite prospectus, which would be subject to approval in accordance with Article 10 PR.

Therefore, the issuer may incorporate the information from the new RD or URD by reference into the existing tripartite prospectus via a supplement in accordance with Article 19 PR to the extent that it qualifies as a significant new factor, material mistake or material inaccuracy in accordance with Article 23(1) PR. It is up to the issuer to assess which information in the RD or URD constitutes a new factor, material mistake or material inaccuracy.

ESMA notes that Article 23(5) PR still applies when incorporating information from a new RD or URD by reference into an existing tripartite prospectus.

The competent authority for approving the original RD or URD is responsible for approving such supplement to the tripartite prospectus pursuant to PR Article 26(5).

ESMA_QA_975

Submission Date

16/07/2021

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Registration Document

Subject Matter

Updating the information in a tripartite prospectus after an RD or URD has expired

Question

Is it possible to update the RD information in a tripartite prospectus after the RD or URD has expired?

ESMA Answer

16-07-2021

Original language

[ESMA31-62-1258 Prospectus Q&A 3.4]

Yes.

Article 12(2) to (3) PR clearly state that the end of the validity of an RD or a URD shall not affect the validity of a tripartite prospectus of which it is part. Accordingly, it continues to be possible to supplement the information in an expired RD or URD that is used in a valid tripartite prospectus by supplementing the tripartite prospectus itself.

ESMA notes that Article 23(5) PR still applies to supplements concerning the information in an expired RD or URD. The competent authority for approving the existing RD or URD is responsible for approving such supplement to the tripartite prospectus pursuant to PR Article 26(5).

ESMA_QA_989

Submission Date

05/05/2021

Status: Published Answer Updated

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Public offer

Subject Matter

Home Member State - Global depository receipts over shares (home Member State)

Question

How is the home Member State determined in relation to global depository receipts over shares (GDRs)?

ESMA Answer

05-05-2021

Original language

ESMA31-62-1258 Prospectuses Q&A nr 6.2}

GDRs are generally issued by a trust or custodian. The trust or custodian most likely will neither be the issuer of the underlying shares nor an entity belonging to the group of the issuer of the underlying shares. As such, the GDRs will not qualify as equity securities, as defined in Article 2(b) PR, but they will qualify as non-equity securities in accordance with Article 2(c) PR.

Consequently, the trust or custodian should use Article 2(m) to determine its home Member State.

ESMA_QA_902

Submission Date

05/05/2021

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Public offer

Subject Matter

Credit rating disclosure in prospectuses

Question

Does Article 4(1) of the CRA Regulation apply to any credit rating mentioned in a prospectus?

ESMA Answer

05-05-2021

Original language

[ESMA 31-62-1258 Prospectuses Q&A 14.13]

Yes, it does.

In accordance with Article 4(1) of the CRA Regulation, whenever a credit rating is included in a prospectus, regardless of whether it is included pursuant to Commission Delegated Regulation 2019/980^[1], prominent and clear information should be provided to state whether or not the credit rating is issued by a credit rating agency established in the Union and registered as per the CRA Regulation.

^[1] For example, pursuant to item 4.1.6 of Annex 6.

ESMA_QA_1004

Submission Date

05/05/2021

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Public offer

Subject Matter

Supplements - Supplement to prospectuses: audited annual financial statements

Question

Does the publication of new audited annual financial statements during the period of validity of a base prospectus or a non-equity prospectus automatically trigger the obligation to produce a supplement?

ESMA Answer

05-05-2021

Original language

[ESMA31-62-1258 Prospectuses Q&A 8.5]

No.

When new audited annual financial statements are published during the period of validity of a base prospectus or a non-equity prospectus, contrary to the situations specified in Article 18(1)(a) of Commission Delegated Regulation 2019/979, there is no automatic trigger to publish a supplement in such a scenario.

Without prejudice to the powers of the home competent authority, the issuer should make its own materiality assessment pursuant to Article 23(1) of the PR to determine whether a supplement is necessary or not.

ESMA_QA_841

Submission Date

31/03/2021

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Publication of prospectus

Subject Matter

Conversion or exchange of non-transferable securities and exemption from publishing a prospectus

Question

Does the exemption provided for in Article 1(5)(b) of the Prospectus Regulation include cases where non-transferable securities are converted into shares?

ESMA Answer

31-03-2021

Original language

[ESMA 31-62-1258 Prospectuses Q&A nr 15.4]

No. The exemption in Article 1(5)(b) of the Prospectus Regulation^[1] does not apply to cases of non-transferable securities converted into shares. The Prospectus Regulation only concerns “transferable securities” as defined in Article 2(a).

^[1] According to Article 1(5)(b) of the Prospectus Regulation(EU) 2017/1129 “the obligation to publish a prospectus shall not apply to the admission to trading on a regulated market of “shares resulting from the conversion or exchange of other securities or from the exercise of the rights conferred by other securities, where the resulting shares are of the same class as the shares already admitted to trading on the same regulated market, provided that the resulting shares represent, over a period of 12 months, less than 20 % of the number of shares of the same class already admitted to trading on the same regulated market, subject to the second subparagraph of this paragraph.”

ESMA_QA_905

Submission Date

31/03/2021

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Public offer

Subject Matter

Global Depositary Receipts (GDRs)

Question

How should the PR be applied in the case of admissions to trading of GDRs where the number of GDRs in issue fluctuates as a result of investors exchanging shares for GDRs (and vice versa) on a continuous basis?

ESMA Answer

31-03-2021

Original language

[ESMA 31-62-1258 Prospectuses Q&A nr 14.11]

ESMA recognises that the operation of a typical GDR facility^[1] should be accommodated by a pragmatic approach to the application of the PR. ESMA therefore considers that it is acceptable for a person applying for admission of GDRs to trading to produce a prospectus covering the admission of "up to" a specified number of GDRs. The number of GDRs can be no more than an amount equivalent to 100% of the issued capital of the issuer at the date of the GDR prospectus because the GDRs can only reflect the existing amount of the issuer's shares.

The prospectus can be used for admission(s) as long as the total number of GDRs in issue does not exceed the limit set out in the prospectus. This would also allow new shareholders (individuals that hold newly issued shares that were issued after the date of the establishment of the GDR "up to" facility) to exchange their shares for GDRs, as long as the number of GDRs in issue does not exceed the amount of the "up to" facility throughout the period for which the prospectus is valid.

The use of the "up to" amount is appropriate to facilitate market activity in that it enables shareholders to exchange their shares for GDRs.

^[1] Where the number of GDRs in issue fluctuates as a result of the facility for investors to exchange shares for GDRs (and vice versa) at any time and outside the issuer's control.

ESMA_QA_842

Submission Date

28/01/2021

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Publication of prospectus

Subject Matter

The exemptions from the obligation to publish a prospectus in Article 1(5) Prospectus Regulation (EU) 2017/1129 as stand-alone exemptions

Question

An issuer issues new shares as a result of a merger. The new shares that the issuer wishes to admit to trading in a regulated market represent less than 20% of

its total number of shares of the same class already admitted to trading on the same regulated market over a period of 12 months. Does the issuer need to make available the document referred to in Article 1(5)(f) in order to avoid the obligation to publish a prospectus?

ESMA Answer

28-01-2021

Original language

(Published as Prospectuses Q&A 15.3)

No. The exemption in point (a) of the first subparagraph of Article 1(5) of the Prospectus Regulation (EU) 2017/1129 applies. All the exemptions in Article 1(5) Prospectus Regulation (EU) 2017/1129 are stand-alone and therefore if one of them applies there is no requirement to publish a prospectus.

ESMA_QA_997

Submission Date

28/01/2021

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Prospectus Register

Subject Matter

Item 18.1.1 of Annex 1 Commission Delegated Regulation 2019/980: clarifying the meaning of “or such shorter period as the issuer has been in operation”

Question

Do these requirements only apply when the issuing entity has been operating for less than one year (e.g. when the issuer is a newly incorporated holding company

of an established business) or is it if the business as a whole has less than one year of history?

ESMA Answer

28-01-2021

Original language

[ESMA31-62-1258 Prospectuses Q&A 7.4d]

The requirements¹ only apply if the business as a whole has less than one year financial information.

If in addition the entire business undertaking at the time of the prospectus is not accurately represented in the audited historical financial information required under item 18.1.1, the issuer will have to assess whether pro-forma information or complex financial history information is needed, e.g. where there is a merger.

1. The requirements in 7.4b and 7.4c.

ESMA_QA_996

Submission Date

28/01/2021

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Financial reporting

Subject Matter

Item 18.1.1 of Annex 1 Commission Delegated Regulation 2019/980: clarifying the meaning of “or such shorter period as the issuer has been in operation”

Question

If an issuer which is incorporated in January 2019 produces a prospectus in June 2019 (No 1) and a new prospectus in November 2019 (No 2), should audited

historical financial information be prepared both for the period from January to the most recent practicable date before publication of prospectus (No 1) and for an additional period in connection with prospectus (No 2)?

ESMA Answer

28-01-2021

Original language

[ESMA31-62-1258 Prospectuses Q&A 7.4.c]

In this example, the issuer has not yet produced financial statements according to its national accounting legislation. Therefore, prospectus (no 1) should include audited historical financial statements for the period covering the date of incorporation to the most recent practicable date before publication of the prospectus. This is a similar situation to situation (2) in the previous question.

Regarding prospectus (no 2), ESMA considers that the audited historical financial information produced for the first prospectus (together with the half yearly report that the issuer will have published by the end of September 2019) would be sufficient under normal circumstances.

ESMA_QA_995

Submission Date

28/01/2021

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Financial reporting

Subject Matter

Item 18.1.1 of Annex 1 Commission Delegated Regulation 2019/980: clarifying the meaning of “or such shorter period as the issuer has been in operation”

Question

What financial information is required where the shorter period is less than one year?

ESMA Answer

28-01-2021

Original language

[ESMA31-62-1258 Prospectus Q&A 7.4b]

The following example should provide some insight into what financial information is required from an issuer that has been operating for less than a year:

An issuer commenced operations on 1 November 2019 and is due to prepare audited historical financial information for the year ended 31 December 2019^[1]. The issuer produces a prospectus in June 2020.

Two situations can be envisaged in terms of the financial information to be provided:

1. Audited historical financial information could be included from the date of incorporation of the issuer (or the date when the issuer started its operations in its current sphere of economic activity, if different from the date of incorporation) until the end of the financial year chosen by the issuer^[1]. In the example above, the financial year of the issuer is from January to December 2019, so the period covered would be two months audited historical financial information, i.e. 1 November 2019 to 31 December 2019.

Or

2. Audited historical financial information could be included from the date of incorporation of the issuer (or the date when the issuer started its operations in its current sphere of economic activity, if different from the date of incorporation) until the most practicable date before the publication of the prospectus. This means that the audited historical financial information should be prepared by the issuer just for

the purposes of the prospectus and the period this information would cover would not be consistent with the future financial information produced according to accounting legislation applicable to the issuer. For example, in the case above, the period covered by audited historical financial information could be from 1 November 2019 until 31 March 2020.

In the example described above, the issuer would not be obliged by the Commission Delegated Regulation 2019/980 to include interim financial information, because:

- i) more than 9 months would not have elapsed since the end of the last audited financial year until the date of the prospectus or the registration document (item 18.2.1 of Annex I Commission Delegated Regulation 2019/980); and
- ii) the issuer would not have published its half-yearly financial report since the draft prospectus was submitted for approval in June (item 18.2.1 of Annex I Commission Delegated Regulation 2019/980).

Situation (1) has the advantage of ensuring timing consistency between the audited historical financial information required by both accounting and prospectus rules. Whereas situation (2) would oblige the issuer to produce audited historical financial statements just for the purposes of the prospectus, with a closing date that would not be consistent with future audited historical financial statements or with those of other issuers.

When the issuer has already published audited historical financial information required by national legislation, this should normally be the only information required to comply with item 18.1.1 in situation (1) referred to above. Additionally, ESMA considers that inclusion of the audited historical financial information required by national legislation together with requirements under item 18.7.1 of Annex 1^[2] and the Recommendations published for start-up companies by ESMA (see paragraphs 135 to 139 of ESMA/2013/319) will normally provide investors with relevant information in the prospectus and should enable issuers to comply with Article 6.1 of the Prospectus Regulation.

However, in exceptional circumstances (such as the absence of interim financial information in the prospectus combined with the passing of a significant amount of months since the end of the last audited financial statements) situation (2) would be more appropriate to satisfy Article 6.1 of the Prospectus Regulation.

[1] According to its national accounting legislation.

[2] *Significant change in the issuer's financial or trading position:* A description of any significant change in the financial position of the group which has occurred since the end of the last financial period for which either audited financial statements or interim financial information have been published, or provide an appropriate negative statement.

ESMA_QA_994

Submission Date

28/01/2021

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Financial reporting

Subject Matter

Item 18.1.1 of Annex 1 Commission Delegated Regulation 2019/980: clarifying the meaning of “or such shorter period as the issuer has been in operation”

Question

What is meant by “or such shorter period as the issuer has been in operation” in item 18.1.1 of Annex 1?

ESMA Answer

28-01-2021

Original language

[ESMA 31-61-1258 Prospectus Q&A 7.4a]

The following example provides an illustration of what is meant by “such shorter period as the issuer has been in operation”:

A company was incorporated in February 2019 and has been in operation since June 2019. The company submits a prospectus for approval at the end of January 2021.

Due to the timing of events, the company won't have audited historical financial information for a whole financial year and will therefore need to cover the “shorter period as the issuer has been in operation”.

In this example, the company should present audited financial information for the short period covering February-December 2019 or June-December 2019 and unaudited interim financial information for the first half-year of 2020^[1]^[2]

The audited historical financial information prepared by the issuer for the period covering February-December 2019 or June-December 2019 would be considered as covering the “shorter period as the issuer has been in operation”.

^[1] Interim financial information would be provided in accordance with item 18.2.1 of Annex I.

^[2] The assumption in this example is that the company's full year financial period is from 1 January to 31 December.

Please note that this clarification provided in relation to item 18.1.1 of Annex 1 is also relevant to other annexes containing a similar requirement.

ESMA_QA_909

Submission Date

28/01/2021

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Public offer

Subject Matter

Updating of the prospectus

Question

Is the issuer entitled to use its prospectus to make several offers?

ESMA Answer

28-01-2021

Original language

[ESMA 31-62-1258 Prospectuses Q&A nr 14.7]

The following example should provide guidance for this particular situation:

In October 2019, the issuer has an approved prospectus to make a public offer of securities at that time. In June 2020, the issuer decides to make a new offer of securities. As the October prospectus does not contain information concerning the new offer the issuer should produce a new prospectus. This new prospectus could incorporate by reference information from the October prospectus in accordance with Article 19 of the PR.

ESMA_QA_908

Submission Date

28/01/2021

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Passporting

Subject Matter

Valuations and statements prepared by an expert

Question

The registration document annexes (e.g. in Annex 1, item 21.1 (b)), require a statement outlining that it is possible to inspect "all reports, letters, and other documents, valuations and statements prepared by any expert at the issuer's

request any part of which is included or referred to in the registration document". Does this paragraph only require documents prepared by an expert to be displayed? Additionally, does the reference to "prepared by an expert at the issuer's request" refer to the whole sentence from "all reports, letters...", or does it refer only to "valuations and statements"?

ESMA Answer

28-01-2021

Original language

[ESMA 31-62-1258 Prospectuses Q&A nr 14.8]

The reference to "prepared by an expert" applies to 'valuations and statements' only, rather than to any other report, letter, other document or historical financial information included or referred to in the registration document. All reports, letters and other documents referred to are expected to be put electronically on display whether or not they are prepared by an expert and whether or not they were prepared at the issuer's request, provided they are referred to in the registration document.

ESMA_QA_907

Submission Date

28/01/2021

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Public offer

Subject Matter

Order of the information in the prospectus

Question

Articles 24 and 25 of Commission Delegated Regulation 2019/980 specify the elements and order of a prospectus and a base prospectus. Is it possible to deviate from the prescribed order?

ESMA Answer

28-01-2021

Original language

[ESMA 31-62-1258 Prospectuses Q&A nr 14.9]

The order prescribed by Articles 24 and 25 is mandatory, e.g. this means that the prospectus begins with the table of contents and is followed by the summary, risk factors and the other information referred to in the annexes to Commission Delegated Regulation 2019/980. However, this does not mean that the issuer is prohibited from including an additional brief cover note which contains general information about the issuer and the issue before the items prescribed in Articles 24 and 25 appear in the prospectus. However, such cover note is not a substitute for the summary or the disclosure requirements required by Commission Delegated Regulation 2019/980.

In the case of wholesale non-equity securities, where an issuer is not under an obligation to include a summary in a prospectus, but wishes to produce an overview section in the prospectus, ESMA considers that issuers may include such an 'overview' section in the place where a summary would usually appear.

ESMA_QA_906

Submission Date

28/01/2021

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Public offer

Subject Matter

How to determine which annexes of Commission Delegated Regulation 2019/980 apply when drawing up a prospectus

Question

Which annexes of Commission Delegated Regulation 2019/980 should be applied when drawing up a prospectus?

ESMA Answer

28-01-2021

Original language

[ESMA 31-62-1258 Prospectuses Q&A nr. 14.10]

To determine which annexes should apply, ESMA has drawn up a table setting out which combinations of annexes should apply to various types of prospectuses. If market participants still have questions^[1] about which annexes apply, then ESMA recommends that they contact the home Competent Authority that will be responsible for the approval of their prospectus.

The table is based on Commission Delegated Regulation 2019/980 and is split into four parts. The first part concerns 'standard' and secondary issuance prospectus registration documents, the second part concerns 'standard' and secondary issuance prospectus securities notes, the third part concerns EU growth prospectus registration documents and the fourth concerns EU growth prospectus securities notes.

While the table sets out the combinations of annexes which should apply, issuers always have the option to include more disclosure than what is specified^[2]. However, for the sake of clarity, the issuer should not include less disclosure.

The table is published separately on ESMA's webpage in an annex to this Q&A. Here is the [link](#) to the annex to A14.10.

^[1] For example, it may be necessary to determine whether the securities described in a prospectus qualify as derivative securities or if they should be treated as asset-backed securities under Commission Delegated Regulation 2019/980 before it is possible to determine which annexes apply to a prospectus.

[2] The issuer has the option to provide more information in accordance with the provisions of Delegated Regulation 2019/980.

ESMA_QA_993

Submission Date

09/11/2020

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Financial reporting

Subject Matter

Identification of profit forecasts in prospectuses

Question

Issuers sometimes make statements that can be considered profit forecasts. How can it be determined whether a profit forecast has been made?

ESMA Answer

09-11-2020

Original language

[ESMA31-62-1258 Prospectus Q&A 7.3]

Article 1(d) of Delegated Regulation 2019/980 states that a profit forecast means:

“a statement that expressly or by implication indicates a figure or a minimum or maximum figure for the likely level of profits or losses for current or future financial periods, or contains data from which a calculation of such a figure for future profits or losses can be made, even if no particular figure is mentioned and the word “profit” is not used.”

ESMA has analysed terms used in the Article to determine what can be considered a profit forecast. In this respect, where applicable, ESMA notes that this Q&A should be read in conjunction with Guidelines 10 to 13 of the Guidelines on disclosure requirements under the Prospectus Regulation (ESMA31-62-1426) which deal with the same topic.

Wording that qualifies as a ‘profit forecast’

An important part of the definition of ‘profit forecast’ are the terms, ‘minimum or maximum figure’. Profit forecasts refer to the issuer’s projections for future periods, where the wording, ‘either directly or indirectly’, indicates the likely minimum or maximum level of the issuer’s future profit or loss. Instead of a precise figure, a profit forecast can also refer to a range of figures particularly when a minimum or maximum figure is mentioned or implied.

Examples of profit forecasts include:

- “We expect this year’s profits before taxes to be between €30 million and €50 million.” • “The profit / loss is expected to be in line with the previous year.”
- “The profit / loss is expected to be higher / lower than the previous year.”
- “This year’s annual results will be positive / negative.”

The phrase ‘**the likely level of profits or losses**’ does not only refer to the profit or loss for the year (bottom line of the profit and loss account) / (bottom line of statement of profit or loss and other comprehensive income) / net profit or loss, but also to other measures of profitability when these measures convey an expectation of a future performance. For example:

Profit forecast derived from profit and loss accounts:

- EBITDA = Earnings before Interest, Taxes, Depreciation and Amortization.
- EBIT = Earnings before Interest and Taxes (and similar measures such as Operating Profit/Earnings/Income).
- EBT = Earnings before Taxes.
- Similar and adjusted versions of the examples above (such as “Adjusted EBIT” or “Recurring net income”).

Example of a profit forecast:

“Before the estimated impact of disposals, [...] current expectations for the 20XX Financial Year are Adjusted Operating Profit of around €100 million and EBITDA [...] of around €160 million.”

Accounting data or financial indicators that may, on certain conditions, be considered as constituting a profit forecast

ESMA adopts a ‘substance over form’ approach concerning what financial measures may be viewed as profit forecasts for the purpose of the Prospectus Regulation. This approach is consistent with the definition of ‘profit forecast’, which includes statements that by implication indicate a minimum or maximum figure or a likely level of profits or losses, even if no particular figure is mentioned.

Examples of measures that may, on certain conditions, be considered as a profit forecast:

1. If an issuer normally communicates financial performance on Gross Profit level, or if the issuer has rigid cost structures ESMA may deem forecasted Gross Profit to be a profit forecast.
2. Projections of cash flow metrics could be deemed profit forecasts in specific instances if indications making it possible to deduce the likely profit level from it are given in the prospectus.
3. Alternative Performance Measures or Key Performance Indicators pointing into the future that are calculated (in full or in part) based on profit/loss measures. The statement '**contains data from which a calculation of such a figure for future profits and losses can be made**' clarifies that the scope of the profit forecast definition encompasses forms of words from which profits or losses can be derived, even if no particular figure is mentioned and the word 'profit' is not used. With this in mind, it follows that information may be considered a profit forecast if it is possible to calculate a figure or a minimum or a maximum for the likely levels of future profit or loss in combination with other information in the prospectus.

Examples of profit forecasts:

- "Turnover for Q4 as well as costs are expected to remain the same as last year."
- "We are expecting this year's turnover to remain the same and this year's EBITDA margin to rise by 5%."

Information does not need to relate to the entirety of the issuer's results to be a profit forecast. Where one or more segments of the issuer's business generates the majority of the issuer's profit / loss, and predictions are made about the level of the segment's profit / loss, this can also constitute a profit forecast for the issuer as a

whole. Likewise, where a proposed acquisition is expected to generate the vast majority of the issuer's profit / loss, and predictions are made about the level of the target's profit / loss, that can also constitute a profit forecast for the issuer if this information is included in a prospectus

'...expressly or by implication indicates'- if the purpose of the wording is to provide information about expected future profit / loss for a specific financial period, it is considered a profit forecast, regardless of the verb used. Particularly if a specific figure is stated.

Examples of profit forecasts:

- "We hope to reach a profit of €10 million this year."
- "We aim to reach a profit of €10-12 million earnings before taxes next year."
- "Our target is to become profitable by the end of Q3 this year."

Long term financial objectives or forecasts

Long term financial objectives, for several future periods (aggregated or not) or for a distant future period may be considered profit forecasts depending on facts and circumstances, such as the context and the way they are presented.

Wording that is not considered to be a profit forecast

To constitute a profit forecast, a statement must be specific with respect to (i) level of profit / loss or other measure of profitability (a number / range / floor / ceiling) and (ii) a specific financial period. Profit forecasts differ from trend information required by item 10 of Annex 1 to Commission Delegated Regulation 2019/980. In practice, there is often a fine line between what constitutes a profit forecast and what constitutes trend information. A general discussion about future prospects of the issuer under trend information will not normally constitute a profit forecast.

Depending on the context and whether a profit forecast can be derived when combined with other information in the prospectus, the following are examples of

disclosures that are not, by themselves, profit forecasts:

- “We expect our sales/revenue to decline to €560 million.”
- “Turnover is expected to rise by 5 % compared to last year.”
- “Our target is to maintain an operating margin of 7% in the medium to long term.”
- “Announcement of an amount of dividend per share.”
- “Description of the issuer’s dividend policy.”

Disclaimers

It is not possible to remove information from the scope of the definition of profit forecast by merely stating that it is not a profit forecast.

Examples:

- “No profit forecast or estimate is included in this prospectus.”
- “Nothing in this document is intended to be, nor should be construed as a profit forecast.”
- “The foregoing statement should not be interpreted to mean X’s future earnings per share will necessarily be the same or greater than its historic earnings per share.”

Identification of profit/loss forecasts in the prospectus

Profit forecasts and related assumptions should be clearly identified in the prospectus as such. It is important for the investor to be able to easily differentiate between a “profit/loss forecast” and other information, such as “objectives” or “trend information”.

ESMA_QA_844

Submission Date

09/11/2020

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Publication of prospectus

Subject Matter

Application of Article 1(5)(a) of the Prospectus Regulation

Question

How is the exemption provided for in point (a) of the first subparagraph of Article 1(5) applied in practice?

ESMA Answer

09-11-2020

Original language

(Published as Prospectuses Q&A 15.1)

Admissions under this exemption must not equal or exceed 20% of the issuer's securities of the same class already admitted to trading on the same regulated market over a 12-month period.

To calculate whether the issuer is exceeding this percentage, it should include the securities that have benefited from this exemption during the previous 12 months in the numerator. However, it should not include securities admitted without a prospectus due to other types of exemptions.

The issuer should include the number of securities of the same class already admitted to trading on the same regulated market at the time it is applying for the new admission in the denominator. (There is no need to calculate for the 12-month average of the securities admitted to trading for the denominator.)

For example:

August 2019: the total number of shares admitted to trading is 100. The issuer applies for the further admission of 10 shares (10%). No prospectus is required.

October 2019: the total number of shares admitted to trading is 110. The issuer applies for the further admission of 4 shares resulting from an offer addressed to its employees. No prospectus is required because the employees' exemption applies (Article 1(5)(h) PR).

March 2020: the total number of shares admitted to trading is 114. The issuer applies for the further admission of 8 shares. No prospectus is required as it amounts to 16% (18/114).

October 2020: the total number of shares admitted to trading is 122. The issuer applies for the further admission of 24 shares. The August 2019 admission of 10 shares is disregarded because more than 12 months have elapsed. The October 2019 admission is also disregarded because it was subject to another exemption. However, the March 2020 admission does count and, therefore, the issuer should add 8 shares to the new application of 24 shares. Based on this calculation, a prospectus is required as it amounts to 26% (32/122).

Although the example set out above relates to shares, ESMA notes that the application of Article 1(5)(a) is the same for non-equity securities.

ESMA_QA_843

Submission Date

09/11/2020

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Public offer

Subject Matter

Adjustment of the basis for the 20% calculation in Article 1(5)(a) of the Prospectus Regulation

Question

Should the basis for the 20% calculation be adjusted for legal measures affecting the number of securities admitted to trading, for example a share split 1 to 2 or a

similar reversed split?

ESMA Answer

09-11-2020

Original language

[ESMA 31-62-1258 Prospectuses Q&A nr 15.2]

Yes. For example:

An issuer has 100 shares admitted to trading in January 2020.

Later in January 2020, the issuer applies for the admission of 18 additional shares to trading on the same regulated market. In this case, the exemption applies as the new admission only represents 18% of the issuer's securities of the same class already admitted to trading on the same regulated market over a 12-month period.

In June 2020, the company splits its capital exchanging the existing 118 shares for 236 new shares (1 x 2).

In December 2020, the issuer applies for the admission of 12 new shares. These new shares plus the previous exempted 18 shares (=30) represent only 13% of the total number of shares (30/236). However, taking into consideration the split that took place in June, the previous 18 shares should be adjusted to 36 (18x2).

Consequently, 48 (36 + 12) shares divided by the number of shares already

admitted (236) amounts to 20% and therefore the issuer should produce a prospectus in December for the admission of the 12 new shares to trading on a regulated market.

Although the example set out above relates to shares, ESMA notes that the application of Article 1(5)(a) is the same for non-equity securities.

ESMA_QA_918

Submission Date

18/02/2020

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Prospectus Summary

Subject Matter

The length of summaries (multiple securities)

Question

How many additional pages can be included in a summary relating to several securities, as per Article 7(7) of the PR?

ESMA Answer

18-02-2020

Original language

ESMA31-62-1258 Prospectuses 13.3

ESMA understands that the fourth subparagraph of Article 7(7) of the PR stipulates that the maximum length of the summary should only be increased by '[..] two additional sides of A4-sized paper', our understanding is that the page limit may only extend to a maximum of nine sides of A4-sized paper.

In addition, ESMA notes that Article 7(7) also refers to a situation involving the use of a key information document (KID). In such case, the length of the summary can be extended by three pages for each additional security.

ESMA_QA_917

Submission Date

18/02/2020

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Prospectus Summary

Subject Matter

Summaries

Question

How many additional pages can be included in a summary where there is more than one guarantor?

ESMA Answer

18-02-2020

Original language

ESMA 31-62-1258 Prospectus Q&A 13.4

As Article 7(7)(c) of the PR refers to 'a guarantee' in the singular form, the text in the final subparagraph of Article 7(7) means the summary may be extended by only one additional side of A4-sized paper per guarantor. Accordingly, if there are multiple guarantors, one additional page could be added per guarantor.

However, acknowledging the size limitations envisaged for summaries in Article 7(3) of the PR and the restriction of one page envisaged per guarantor, ESMA expects that summaries with more than one guarantor be kept as short as possible and that these additional pages only be used to include information relating to the guarantors. Such an approach would be in line with the restrictions envisaged in Article 7 and the general principle in Article 6(2) of the PR which emphasises presentation in an easily analysable, concise and comprehensible form.

ESMA_QA_919

Submission Date

04/12/2019

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Prospectus Summary

Subject Matter

Pro-forma summaries in base prospectuses

Question

Is it possible to include a pro-forma summary in a base prospectus?

ESMA Answer

04-12-2019

Original language

[ESMA31-62-1258 Prospectuses 13.2]

No. It is not possible to include a pro-forma summary in a base prospectus.

Article 8(8) of the Prospectus Regulation states that ‘a summary shall only be drawn up once the final terms are included in the base prospectus, or in a supplement, or are filed, and that summary shall be specific to the individual issue’. ESMA understands that the intention of this article is to clarify that it is not possible to include a summary in a base prospectus, unless the final terms are included in the base prospectus or supplement and the issue specific summary is annexed thereto.

While the Prospectus Directive required the inclusion of such a pro-forma summary in base prospectuses, Recital 37 of the Prospectus Regulation clarifies that the Prospectus Regulation no longer allows such summaries in order to reduce the administrative burden on the parties responsible for the prospectus and to improve the readability of base prospectuses. In that regard, ESMA notes that including pro-forma summaries in base prospectuses does not present the investors with a comprehensible document, since significant parts of the pro-forma summary are incomplete or have not been determined at the time of the approval of the base prospectus.

ESMA_QA_910

Submission Date

04/12/2019

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Public offer

Subject Matter

Application of the various annexes of Commission Delegated Regulation 2019/980

Question

Which annex(es) should be applied where the securities are not the same but comparable to existing types of securities?

ESMA Answer

04-12-2019

Original language

[ESMA 31-62-1258 Prospectuses Q&A nr 14.6]

Generally, the annexes which apply to those existing securities should be applied to the prospectus for comparable securities. However, issuers and competent authorities should consider whether it is necessary to include additional information in the prospectus in order to satisfy the 'necessary information test' in Article 6(1) and Article 14(2) of the Prospectus Regulation. For example, this information could be derived from items from another securities note or additional information annex, taking into account the relevant characteristics of the securities being offered or admitted to trading on a regulated market.

Recital 24 of Commission Delegated Regulation 2019/980 states that, 'there is the possibility that certain types of securities that are not covered by the Annexes to this Regulation will be offered to the public or admitted to trading. In such a case, to enable investors to make an informed investment decision, competent authorities should decide in consultation with the issuer, offeror or person asking for admission to trading on a regulated market which information should be included in the prospectus.'. Therefore, issuers should contact the competent authority in their home Member State when they are uncertain which annexes should be applied to a prospectus.

ESMA_QA_992

Submission Date

12/07/2019

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Financial reporting

Subject Matter

Inclusion of Alternative Performance Measures (APMs) in information disclosed about the offer to the public or the admission to trading on a regulated market

Question

Given that Article 16(1)(d) of the Commission Delegated Regulation (EU) 2019/979 sets out that only APMs included in the prospectus can be included in the

information disclosed about the offer to the public or the admission to trading on a regulated market, how should the issuer, offeror or person asking for admission to trading proceed in case a participant at a live presentation (e.g. a roadshow/interview) requests information about an APM which is not included in the prospectus?

ESMA Answer

12-07-2019

Original language

[ESMA31-62-1258 Prospectus Q&A 7.2]

Before the prospectus is approved and published

If a participant at a live presentation requests information about an APM that is not included in the draft prospectus which has been submitted to the relevant national competent authority (NCA) but which has not yet been approved and published, the issuer, offeror or person asking for admission to trading is free to provide information on the APM in question. However, in order to ensure that no APM is included in the information disclosed about the offer/admission to trading without being included in the prospectus, the issuer, offeror or person asking for admission to trading should afterwards include the APM in the draft prospectus before this is approved and published, it being understood that the ESMA Guidelines on Alternative Performance Measures should be taken into account.

After the prospectus is approved and published

If a participant at a live presentation requests information about an APM that is not included in the approved and published prospectus, the issuer, offeror or person asking for admission to trading can proceed in two ways. It can decide to provide information on the APM and afterwards publish a supplement containing this APM, thereby ensuring consistency between the prospectus and the information disclosed about the offer/admission to trading. In such case, the ESMA Guidelines on Alternative Performance Measures should be taken into account. Alternatively, if the issuer, offeror or person asking for admission to trading does not wish to publish a supplement, it should decline to provide information on the APM as there will otherwise be a breach of the requirement set out in Article 16(1)(d) of the Commission Delegated Regulation (EU) 2019/979.

ESMA_QA_991

Submission Date

12/07/2019

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Financial reporting

Subject Matter

Item 18.1.1 of Annex I of the Commission Delegated Regulation (EU) 2019/980

Question

Item 18.1.1 requires issuers to disclose audited historical financial information covering the latest three financial years and the audit report in respect of each year. If historical information has not been restated and the issuer decides to present the

historical financial information for the last three years in a columnar format, and an accountant's report is provided for the purposes of the prospectus, would this meet the requirements of the Prospectus Regulation?

ESMA Answer

12-07-2019

Original language

[ESMA31-62-1258 Prospectus Q&A 7.1]

The issuer has the right to choose the format of the historical financial information as far as the minimum information required by item 18.1.1 is included.

ESMA_QA_1015

Submission Date

12/07/2019

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Content of prospectus

Subject Matter

Derivatives, indices, underlyings and related disclosure - Type of underlying

Question

In Commission Delegated Regulation 2019/980 Annex 14 item 4.8, Annex 15 item 4.8, Annex 16 item 4.9, Annex 17 item 2.2.2 and Annex 27 item 3.1.7 a statement setting out the type of underlying is required. According to the respective annexes,

a statement setting out the type of the underlying is labelled as Category A information and must, therefore, be included in the base prospectus. When making the Category A statement setting out the type of the underlying in the base prospectus, how precise should the information be?

ESMA Answer

12-07-2019

Original language

[ESMA31-62-1258 Prospectuses Q&A 12.2]

All information known at the time of drawing up the base prospectus must be disclosed in the base prospectus itself. Therefore, if the precise underlying is known by the issuer, then full and complete information must be included in the base prospectus.

If the issuer has not decided on the div of the underlying at the time of the approval of the base prospectus, then a more general statement setting out the type of the underlying should be included. The minimum disclosure in the base prospectus would be whether the underlying is:

- an equity security;
- a non-equity security;
- an interest rate;
- an index;

- a commodity; or
- a reference entity or reference obligation.

If the type of underlying does not fall within the categories listed above, the type of underlying should be defined.

If the underlying is a basket of underlyings, the type(s) of underlying(s) should be defined in the same manner as described above.

The final terms then have to state the div of the underlying(s) pursuant to Category C information requirements and may provide information in accordance to Annex 28. In case of proprietary indices and credit-linked securities further disclosure requirements must be complied with in accordance with the Commission Delegated Regulation 2019/980.

ESMA_QA_1014

Submission Date

12/07/2019

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Content of prospectus

Subject Matter

Derivatives, indices, underlyings and related disclosure - Interpretation of the text "description of the index" included in item 2.2.2 of Annex 17 of the Commission Delegated Regulation (EU) 2019/980

Question

ESMA has discussed how the text “description of the index” included in item 2.2.2 (“Where the underlying is an index”) of Annex 17 of the Commission Delegated Regulation (EU) 2019/980 should be interpreted?

ESMA Answer

12-07-2019

Original language

[ESMA31-62-1258 Prospectuses Q&A 12.1]

To allow an investor to make an informed assessment, ESMA believes that the description of the index should contain the essential characteristics which will enable full comprehension of the index and its dynamics.

Accordingly, ESMA considers that at least a description of the following essential characteristics should be included:

- strategy of the index/investment policy;
- description of the individual selection process of the components weighting factors;
- method and formulas of calculation;
- name of the calculation agent;
- adjustment rules;

- review frequency;
- type of index (price return, excess return, etc.); and
- currency

The description of the composition of the index should be provided as of the date of the prospectus.

ESMA_QA_1013

Submission Date

12/07/2019

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Base Prospectus/Final terms

Subject Matter

Issue specific details in case of Category B items

Question

What relevant details not known at the time of the approval of the base prospectus may be included in final terms in case of Cat.B items?

ESMA Answer

12-07-2019

Original language

[ESMA31-62-1258 Prospectuses Q&A 11.2]

ESMA considers that Article 26(2) of the Commission Delegated Regulation (EU) 2019/980 implies that for an item categorized as “**CAT. B**”, the base prospectus should contain all the general principles of such item and only placeholders for the relevant div not known at the time of the approval of the base prospectus. ESMA also believes that requiring a defined and limited list of issue specific div ensures legal certainty and harmonization of the final terms.

ESMA therefore believes that such div can only refer to amounts, currencies, dates, time periods, percentages, reference rates, screen pages, names and places.

The final terms may replicate or refer to such principles and fill out the relevant placeholders.

Examples of CAT. B Items:

a) Example of final terms replicating the principle:

THE BASE PROSPECTUS:

“Redemption Amount payable in respect of each certificate as determined by the Calculation Agent shall be:

(i) if the Final Reference Price is equal to or greater than [O] of the Initial Reference Level, then the settlement Amount shall be [O]

(ii) if the Final Reference Price is less than [O] of the Initial Reference Level, then the Settlement Amount shall be [O]"

THE FINAL TERMS:

"Redemption Amount payable in respect of each certificate as determined by the Calculation Agent shall be:

(i) if the Final Reference Price is equal to or greater than 80 per cent of the Initial Reference Level, then the Settlement Amount shall be 200 EUR

(ii) if the Final Reference Price is less than 80 per cent of the Initial Reference Level, then the Settlement Amount shall be 0 EUR"

b) Example of final terms referring to the principle:

THE BASE PROSPECTUS:

"XY. Redemption at the option of the Issuer (Issuer Call)

If Issuer Call is applicable, the Issuer may:

(a) in not less than 15 nor more than 30 days' notice to the Noteholders; and

(b) in not less than 4 days before the giving of the notice referred to in a notice to the Trustee redeem all or some only of the Notes then outstanding on any Optional Redemption Date and at the Optional Redemption Amount specified in, or determined in the manner specified in, the applicable Final Terms."

THE FINAL TERMS:

"Redemption at the option of the Issuer (as referred to under condition XY)

Optional Redemption Date: [xx-2019]

Optional Redemption Amount: 1000 EUR"

ESMA_QA_1012

Submission Date

12/07/2019

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Base Prospectus/Final terms

Subject Matter

More than one final terms for a specific issue of bonds

Question

Can an issuer provide investors and file with the Competent Authority more than one document with final terms for a specific issue of bonds?

ESMA Answer

12-07-2019

Original language

[ESMA31-62-1258 Prospectuses Q&A 11.1]

ESMA has analysed two cases where more than one document with final terms for a specific issue of bonds could be filed:

1. Amendment of information included in final terms that is not a significant new factor, material mistake or material inaccuracy: in this case, ESMA considers that issuers should publish a notice of the change to amend final terms, if they have reserved the right to do so in the applicable terms and conditions. It is the issuer's responsibility to ensure compliance with the applicable terms and conditions and any national laws, in order to prevent an infringement of the existing securities holders' rights.
2. A significant new factor, material mistake or material inaccuracy relating to the information included in the final terms which is capable of affecting the assessment of the securities: in this case, it is ESMA's view that a supplement to the related base prospectus with reference to the amended final terms in accordance with Article 23 of the Prospectus Regulation would be required. In addition to the required supplement, ESMA recommends to file and publish a second set of final terms replacing the first set of final terms to give a clear picture for investors. This allows the investors to easily have a full and clear view of the relevant issue.

Without prejudice to Article 18 of Commission Delegated Regulation 2019/979, Publication of a supplement to the prospectus, ESMA considers that it is up to the issuer to assess the significance or materiality of a new factor, mistake or inaccuracy, without prejudice to the powers of the home Competent Authority.

ESMA_QA_988

Submission Date

12/07/2019

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Public offer

Subject Matter

Home Member State - Nearly equivalence of Euro 1,000 (Article 2(m)(ii) of the Prospectus Regulation)

Question

When determining the home Competent Authority, the figure of EUR 1,000 is a key element. ESMA discussed how the second sentence of Article 2(m)(ii) of the

Prospectus Regulation, in particular the part which states "nearly equivalent to EUR 1,000", is applied in practice to cases where the securities are denominated in a currency other than euro?

ESMA Answer

12-07-2019

Original language

[ESMA31-62-1258 Prospectuses Q&A 6.1]

The decision regarding which Competent Authority should approve the prospectus on the basis of the denomination of the non-equity securities according to Article 2(m)(ii) of the Prospectus Regulation should be made at the time of the submission of the draft prospectus. At that time, "nearly equivalent" doesn't mean exactly EUR 1,000.

ESMA_QA_984

Submission Date

12/07/2019

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Public offer

Subject Matter

Incorporation by reference: language requirements

Question

Is it possible to include or incorporate by reference only the translation of the audited financial statements and the audit report without a letter/statement of consent of the auditor to fulfil the requirement of Annex 1, item 18.1. Commission

Delegated Regulation 2019/980 (“audited historical financial information”)? If yes, is it necessary to request a written confirmation for the accuracy of the translation and, if so, who has to issue this written confirmation?

ESMA Answer

12-07-2019

Original language

[ESMA31-62-1258 [Prospectus Q&A 5.1c]

Yes, it is possible to include or incorporate by reference the translation of the audited financial statements and the audit report without a letter/statement of consent of the auditor. No written confirmation for the accuracy of the translation is needed.

ESMA draws attention to the fact, that according to national legislation it might be necessary to ask for the auditor’s consent to include or incorporate by reference the audit report in the prospectus.

ESMA_QA_1011

Submission Date

12/07/2019

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Public offer

Subject Matter

Responsibility Statements

Question

Where an offer of securities involves a guarantee, can the guarantor be required to make a responsibility statement in the prospectus, in addition to the issuer's responsibility statement?

ESMA Answer

12-07-2019

Original language

[ESMA31-62-1258 Prospectuses Q&A 10.1b]

At least one of the persons mentioned in Article 11(1) of the Prospectus Regulation must be responsible for the whole prospectus, notwithstanding that there might be different persons responsible separately for particular parts of the prospectus. The Prospectus Regulation only requires that at least one of these persons mentioned in Article 11(1) is responsible for the whole prospectus. It is up to national legislation to determine whether another person (therefore, more than one person) should also be responsible for the whole or part of the prospectus.

ESMA_QA_983

Submission Date

12/07/2019

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Public offer

Subject Matter

Incorporation by reference: language requirements

Question

Is it possible to incorporate by reference the translation of a document that has been approved or filed with the competent authority in a different language? For instance, a Spanish issuer has drawn up its prospectus in English, can it have its

annual report translated into English and incorporate it by reference into the prospectus?

ESMA Answer

12-07-2019

Original language

[ESMA31-62-1258 Prospectus Q&A 5.1b]

The translation of a document may be incorporated by reference as long as it complies with Article 19 of the Prospectus Regulation.

ESMA_QA_1010

Submission Date

12/07/2019

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Public offer

Subject Matter

Responsibility Statements

Question

If a transaction combines a sale from a shareholder and an issue of new shares can the selling shareholder be required to make a responsibility statement in the prospectus, in addition to the responsibility statement already included in the

prospectus?

ESMA Answer

12-07-2019

Original language

[ESMA31-62-1258 Prospectuses Q&A 10.1a]

The Prospectus Regulation only requires that at least one of the persons mentioned in Article 11(1) (the issuer or its administrative, management or supervisory bodies, the offeror, the person asking for the admission to trading on a regulated market or the guarantor, as the case may be) is responsible for the whole prospectus. It is up to national legislation to determine whether another person (therefore, more than one person) should also be responsible for the whole or part of the prospectus.

ESMA_QA_1009

Submission Date

12/07/2019

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Passporting

Subject Matter

Quality of translations of passported prospectuses

Question

The translated version of the prospectus referred to in Article 27.3 of the Prospectus Regulation should contain the same information as the original version published in the home Member State. How should the issuer and the home

Competent Authority react in case of significant mistakes or omissions of information contained in the translated version concerning the information contained in the approved prospectus?

ESMA Answer

12-07-2019

Original language

[ESMA31-62-1258 Prospectuses Q&A 9.1d]

Without prejudice to the fact that the person responsible for the prospectus is also responsible for any translation of the approved prospectus, if a translated version of a prospectus contains material mistakes or omissions of information which might cause investors to make a misleading assessment of the issuer and/or the securities, both the home Competent Authority and the issuer should cooperate with the host competent authority in finding the solution which better fits the specific case.

ESMA_QA_982

Submission Date

12/07/2019

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Public offer

Subject Matter

Incorporation by reference: language requirements

Question

Is it possible to incorporate by reference information in a language different than the language in which the prospectus is drafted?

ESMA Answer

12-07-2019

Original language

[ESMA31-62-1258 Prospectus Q&A 5.1a]

Yes, the issuer can incorporate a document drawn up in a different language than that of the prospectus provided that the language of the incorporated document complies with the language rules of the Prospectus Regulation. For example: the competent authority of Poland approves a prospectus drawn up in English that incorporates by reference the annual financial statements drawn up in Polish. However, if the issuer wishes to passport this prospectus it could do so only to countries where Polish is accepted by the host competent authorities.

ESMA_QA_920

Submission Date

12/07/2019

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Prospectus Summary

Subject Matter

Inclusion of “extra” information in individual summaries

Question

Can a summary related to an individual issue contain information that is not included in the base prospectus, final terms or supplement?

ESMA Answer

12-07-2019

Original language

ESMA31-62-1258 Prospectuses 13.1

No. The summary of the individual issue shall not include information which was not included in the base prospectus, final terms or supplement. However, the issuer, offeror or person asking for the admission to trading on a regulated may add sub-headings, where deemed necessary, under each section of the summary according to Article 7(9) of the Prospectus Regulation.

ESMA_QA_980

Submission Date

12/07/2019

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Public offer

Subject Matter

Subscription of securities by residents of a country where the public offer is not taking place

Question

Is it possible for residents in Member State 'A' (where a public offer does not take place) to subscribe for securities in Member State 'B' (where the public offer takes

place directly or through their financial intermediaries acting on behalf of these investors)?

ESMA Answer

12-07-2019

Original language

[ESMA31-62-1258 Prospectus Q&A 4.4]

Yes. There is no need for the offeror to publish a prospectus in Member State A, as no public offer is made in such a country. But this does not prevent investors¹ in that country to subscribe or buy the securities which are subject to a public offer in another Member State. What is relevant in this case is that a prospectus is published in Member State B where the public offer takes place.

Footnote 1

There are different situations where investors in Member State 'A' might find out that a public offer is taking place in Member State 'B' even when there is no public offer in the former. For example, investors in Member State 'A' find out about the offer in Member State 'B' by their own means, without a communication to them in the sense of Article 2 (d) of the Prospectus Regulation; the offer in Member State 'A' is exempt from the prospectus obligation because it falls under one of the cases set out in Article 1(4) or 3(2) of the Regulation; investors are informed of the public offer in Member State 'B' by their financial intermediaries acting under their contractual duty as custodians to inform their clients.

ESMA_QA_979

Submission Date

12/07/2019

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Public offer

Subject Matter

Rights issue: communication by a custodian to its clients in a member state about pre-emption rights in relation to a public offer of new shares taking place in another EEA member state

Question

Is the communication from a custodian to its clients (normally under its contractual duty to inform them) in respect of a rights issue in another EEA Member State (where a prospectus has been approved) in itself an "offer of securities to the public" and therefore would not be permitted unless a passport had been obtained in order to make public offers into the EEA Member State of the clients of the custodian?

ESMA Answer

12-07-2019

Original language

[ESMA31-62-1258 Prospectus Q&A 4.3]

ESMA considers that a communication of a custodian bank informing its clients in one Member State about their pre-emption rights in relation to a public offer of new shares taking place in another Member State or in a third country does not mean that the custodian is making a public offer in the former Member State. The PR should not be interpreted in a way that limits cross border share ownership, restricts the ability of custodians to comply with their contractual obligations or restricts shareholders' ability to exercise their pre-emption rights.

Such a communication would constitute a public offer by the custodian only if it meets the following two conditions:

- It provides to the shareholders the terms of the offer and of the shares that would enable them to decide to subscribe the share and

- The custodian acts on behalf of the offeror or issuer when making such a communication.

ESMA_QA_1008

Submission Date

12/07/2019

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Passporting

Subject Matter

Quality of translations of passported prospectuses

Question

If the host competent authority decided to undertake that task voluntarily, would it mean that the offer cannot proceed until the translation has been accepted or checked by the host Competent Authority?

ESMA Answer

12-07-2019

Original language

[ESMA31-62-1258 Prospectuses Q&A 9.1c]

No, the passport process may not be stopped. However, if the host competent authority finds that a translation is not accurate, it could refer its findings to the Competent Authority of the home Member State as envisaged in Article 37 of the Prospectus Regulation (precautionary measures).

ESMA recommends issuers to insert, in any translation of a prospectus, a statement that clarifies that the document is a translation of the approved prospectus made under the sole responsibility of the person responsible for the approved prospectus.

ESMA_QA_978

Submission Date

12/07/2019

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Public offer

Subject Matter

Free offers

Question

Can 'free offers' be considered outside the definition of public offer (for example options granted to employees for no consideration)?

If they do fall under the definition of public offer, could it be considered that they have a total consideration of zero and therefore fall outside the scope of the Prospectus Regulation (EU) 2017/1129, e.g. where the total consideration is less than EUR 1,000,000?

ESMA Answer

12-07-2019

Original language

[ESMA31-62-1258 Prospectus Q&A 4.2]

ESMA considers that where securities are generally allotted free of charge no prospectus should be required. In the case of allocations of securities (which are almost invariably free of charge) where there is no element of choice on the part of the recipient, including no right to repudiate the allocation, there is no "offer of securities to the public" within the meaning of Article 2(d) of the Prospectus Regulation. This is because the definition refers to a communication containing "sufficient information to enable an investor to decide to purchase or subscribe for the securities". Where no decision is made by the recipient of the securities, there is no offer for the purposes of the Prospectus Regulation. Such allocations will therefore fall outside the scope of Prospectus Regulation.

Offers of free shares, where the recipient decides whether to accept the offer, are properly regarded as an offer for zero consideration. As such, they would fall within the excluded offers under Article 1.3 of the Prospectus Regulation, and accordingly no prospectus can be required.

This analysis does not prevent Competent Authorities from assessing whether an offer, presented as an offer of free shares, in fact disguises a 'hidden' consideration. However, if the shares are expressly offered in the place of quantifiable financial benefits in another form, then it might be appropriate to identify consideration to the value of the benefits that the employee would otherwise have been entitled to receive.

ESMA_QA_1007

Submission Date

12/07/2019

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Passporting

Subject Matter

Quality of translations of passported prospectuses

Question

Notwithstanding last sentence of Article 24.1 of the Prospectus Regulation, would it be possible or desirable that the host Competent Authority scrutinises the quality of the translation of a prospectus to its own language?

ESMA Answer

12-07-2019

Original language

[ESMA 31-62-1258 Prospectus Q&A 9.1b]

No

ESMA_QA_977

Submission Date

12/07/2019

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Public offer

Subject Matter

Share option schemes

Question

Are non-transferable options covered by the Prospectus Regulation? Even if they are not, would the exercise of those options constitute an offer of the underlying shares?

ESMA Answer

12-07-2019

Original language

[ESMA31-62-1258 Prospectus Q&A 4.1]

ESMA believes that non-transferable options do not fall under the Prospectus Regulation, as the Prospectus Regulation only applies to transferable securities (Article 2(a)).

As for the exercise of non-transferable options, at the time of the conversion or exercise there is no public offer within the meaning of Article 2(d) of the Prospectus Regulation since it is just the execution of a previous offer.

Where in the view of national Competent Authorities transactions are structured as options, but are in reality an offer of shares, such authorities reserve the right to re-qualify the options as an offer of shares in order to overcome any circumvention of the Prospectus Regulation.

ESMA_QA_1005

Submission Date

12/07/2019

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Passporting

Subject Matter

Quality of translations of passported prospectuses

Question

Should the quality of the translations be left entirely to the responsibility of the issuer?

ESMA Answer

12-07-2019

Original language

[ESMA31-62-1258 Prospectuses Q&A 9.1a]

Yes. ESMA considers that the persons responsible for the prospectus is also responsible for any translation of the approved prospectus.

ESMA_QA_1003

Submission Date

12/07/2019

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Public offer

Subject Matter

Supplements - Application of Article 23(3) subparagraphs 1 and 2

Question

When must a financial intermediary comply with the obligations set out in the subparagraphs 1 and 2?

ESMA Answer

12-07-2019

Original language

[ESMA31-62-1258 Prospectuses Q&A 8.4]

For the avoidance of doubt, ESMA would like to clarify that the obligations addressed to financial intermediaries in Article 23(3), subparagraphs 1 and 2, of the Prospectus Regulation, should be construed as follows: the obligation laid down in subparagraph 1 should be fulfilled only at the time when investors accept through a financial intermediary to purchase or subscribe the security. While the obligation laid down in subparagraph 2 should be fulfilled on the day when the supplement is published.

ESMA_QA_1002

Submission Date

12/07/2019

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Public offer

Subject Matter

Supplements - Application of Article 23(3) where an entity distributes its own securities

Question

Article 23(3) of the Prospectus Regulation sets out different obligations for issuers and financial intermediaries. Where a financial intermediary distributes its own

securities should it be treated as an issuer or a financial intermediary?

ESMA Answer

12-07-2019

Original language

[ESMA31-62-1258 Prospectuses Q&A 8.3]

Although the concept of a financial intermediary is not defined in the Prospectus Regulation, ESMA generally understands financial intermediaries to be those persons who are allowed, by EU or national legislation, to distribute securities issued by other entities. Consequently, ESMA believes that the obligations of Article 23(3) of the Prospectus Regulation addressed to financial intermediaries clearly apply to those persons when they distribute securities issued by other entities.

However, the situation is slightly more equivocal where the financial intermediary distributing the securities is also the issuer, e.g. credit institutions, investment firms or management companies distributing securities they have issued themselves.

To provide clarity in respect of the latter situation, above, ESMA believes that financial intermediaries should also comply with the obligations addressed to financial intermediaries in Article 23(3) of the Prospectus Regulation, when distributing securities that they issue themselves. This understanding appears to be in line with both Recital 45 and Article 4(1) point 5 of MiFID II (Directive 2014/65/EU) and is consistent with the principle of investor protection.

ESMA_QA_1000

Submission Date

12/07/2019

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Public offer

Subject Matter

Supplements - Supplement to prospectuses: interim financial information

Question

Is the publication of interim financial statements considered as a significant new factor that requires the publication of a supplement in accordance with Article 23 of the Prospectus Regulation?

ESMA Answer

12-07-2019

Original language

[ESMA31-62-1258 Prospectuses Q&A 8.1]

There is no systematic requirement to supplement the prospectus when interim financial statements are produced. This will depend on the circumstances of the case, in particular the relevance of the information included in the interim financial statements (such as any significant deviation in relation to previous financial information) or the type of securities to which the prospectus refers. In case of doubt ESMA recommends issuers to produce the supplement.

ESMA_QA_915

Submission Date

12/07/2019

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Public offer

Subject Matter

Offering programmes

Question

Is it mandatory for issuers to set in a base prospectus a fixed amount for the programme?

ESMA Answer

12-07-2019

Original language

[ESMA31-62-1258 Prospectus Q&A nr. 14.1]

ESMA considers that it is not mandatory to include the amount of the programme in the base prospectus.

ESMA_QA_914

Submission Date

12/07/2019

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Public offer

Subject Matter

Use of the term “prospectus”

Question

May an issuer call a document a “Prospectus” when the document does not fulfill the requirements set out in the Prospectus Regulation? For example, if an issuer is exempt from having to produce a prospectus, but decides to prepare a document

with an explanation of the securities to be offered may this document be called a prospectus?

ESMA Answer

12-07-2019

Original language

[ESMA 31-62-1258 Prospectuses Q&A nr 14.2]

ESMA recommends issuers not to use the term “prospectus” for documents that have not been approved according to: the Prospectus Regulation; other EU legislation where the term “prospectus” is used; or any national legislation within a Member State. If issuers use this term, they are encouraged to provide a clear statement in the document indicating that it has not been approved in accordance with Prospectus Regulation (EU) 2017/1129. Otherwise the use of the term “prospectus” could be misleading.

ESMA_QA_913

Submission Date

12/07/2019

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Public offer

Subject Matter

Item 4.6 of Annex 11 of Commission Delegated Regulation (EU) 2019/980

Question

How should the requirement in item 4.6 of Annex 11 of Commission Delegated Regulation (EU) 2019/980 on the disclosure of resolutions, authorisations and approvals be interpreted?

ESMA Answer

12-07-2019

Original language

[ESMA 31-62-1258 Prospectuses Q&A nr 14.3]

It is understood that the wording 'by virtue of which the securities have been or will be created and/or issued' in item 4.6. of Annex 11 of Commission Delegated Regulation (EU) 2019/980 concerns only legal acts on the part of the issuer, i.e. general meeting resolutions and board of directors' decisions.

However, disclosure on any legal acts on the part of third parties, e. g. approvals by the central bank or competition authorities, or the fulfillment of any other external preconditions to the creation or the issuance of the securities might also be appropriate according to item 5.1 of Annex 11 Prospectus Regulation and Article 6(1) Prospectus Regulation.

If any internal resolutions, authorisations or decisions on the part of the issuer or any external preconditions on the part of third parties are pending or can be revoked, the issuer is expected to include a clear statement to that effect and an explanation of the consequences in case the required resolution, authorization, approval is not given or a precondition is not fulfilled. This information might also be required according to item 5.1.4. of Annex 11 Commission Delegated Regulation (EU) 2019/980. Certain of the abovementioned elements might also be considered as risk factors.

ESMA_QA_912

Submission Date

12/07/2019

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Public offer

Subject Matter

Scope of the wording 'any bankruptcies, receiverships or liquidations' used in Annex 1, item 12.1 and Annex 3, item 8.1

Question

Third paragraph under (c) of item 12.1 (and item 8.1) requires that the prospectus includes:

“details of any bankruptcies, receiverships, liquidations or companies put into administration in respect of those persons described in points (a) and (d) of the first subparagraph who acted in one or more of those capacities for at least the previous five years;”

Is the required disclosure limited to declared bankruptcies, receiverships or liquidations?

ESMA Answer

12-07-2019

Original language

[ESMA31-62-1258 Prospectuses Q&A nr 14.4]

ESMA considers that the scope of the required disclosure is not restricted to declared bankruptcies, receiverships or liquidations but that also information on bankruptcies, receiverships, liquidations or administration that are pending, or are in progress, should be provided.

ESMA_QA_911

Submission Date

12/07/2019

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Public offer

Subject Matter

Estimate expenses charged by a financial intermediary in a retail cascade

Question

Does the prospectus summary have to contain information about estimated expenses charged by intermediaries offering securities in the retail cascade?

ESMA Answer

12-07-2019

Original language

[ESMA31-62-1258 Prospectuses Q&A nr 14.5]

Financial intermediaries in a retail cascade are offerors, but their offer is not the current offer which is the subject matter of the prospectus, and Commission Delegated Regulation (EU) 2019/980 expressly requires a notice specifying that the financial intermediaries acting in a retail cascade shall make available the information on the subsequent retail cascade offer when it will occur.

The issuer, offeror or person seeking admission to trading on a regulated market is not required to disclose expenses charged to the investor by financial intermediaries offering securities in a retail cascade in the section titled 'key information on the securities' in the summary. Expenses charged to investors by the financial intermediaries will be disclosed in the financial intermediaries' terms and conditions.

ESMA_QA_2121

Submission Date

27/03/2019

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Content of prospectus

Subject Matter

Applicability of the Level 3 guidance relating to the Prospectus Directive after the entry into application of the Prospectus Regulation

Question

To what extent do the ESMA Q&As relating to prospectuses and the ESMA update of the CESR Recommendations apply to prospectuses drawn up in

accordance with the Prospectus Regulation?

ESMA Answer

27-03-2019

Original language

[ESMA31-62-1258 Prospectuses Q&A 2.1]

ESMA Q&As relating to prospectuses¹ and the ESMA update of the CESR recommendations² should be applied to prospectuses drawn up under the Prospectus Regulation to the extent they are compatible with the Prospectus Regulation. The application of both documents can help to facilitate the review process and assist issuers when drawing up prospectuses.

1 ESMA31-62-780 – Q&As on prospectuses (29th updated version – January 2019).

2 ESMA/2013/319 – ESMA update of the CESR recommendations (20 March 2013).

ESMA_QA_970

Submission Date

27/03/2019

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Registration Document

Subject Matter

Updating information in a registration document before it is part of a prospectus

Question

How should the information in a registration document be updated before it is a constituent part of a prospectus?

ESMA Answer

27-03-2019

Original language

[ESMA/2019/ESMA31-62-1258 Q&A 3.1]

The information in a registration document is updated via a supplement pursuant to Article 10(1) of the Prospectus Regulation if it is not a constituent part of a prospectus. This supplement must be submitted for approval to the competent authority that approved the registration document.

Where the registration document was passported before the supplement was approved, the approved supplement must be passported to the same Member States as the registration document pursuant to Article 26(5) of the Prospectus Regulation.

Withdrawal rights

According to Article 10(1) of the Prospectus Regulation, the right to withdraw acceptances does not apply when a registration document is supplemented. This is a consequence of the fact that there is no offer of securities to the public if a registration document is not a constituent part of a prospectus.

ESMA_QA_974

Submission Date

27/03/2019

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Registration Document

Subject Matter

Updating information in a registration document or a universal registration document after it is part of a prospectus

Question

How should information in a registration document or a universal registration document be updated after it is a constituent part of a prospectus?

ESMA Answer

27-03-2019

Original language

[ESMA31-62-1258 Prospectus Q&A 3.3]

Article 9(1) of the Prospectus Regulation explains that issuers can draw up a registration document in the form of a universal registration document. After a registration document or universal registration document has become a constituent part of a prospectus, the information in that registration document or a universal registration document is updated via a supplement. Additionally, the prospectus(es) of which the registration document or universal registration document is a constituent part must also be supplemented in accordance with Article 23 of the Prospectus Regulation. Both the supplements to the registration document, or to the universal registration document, and the supplement to the prospectus should be published in a single document.

Where the supplement updates several prospectuses in accordance with Article 23(5) of the Prospectus Regulation, the supplement should clearly identify all the prospectuses to which it relates.

The competent authority to approve the supplements

Article 26(3) of the Prospectus Regulation provides that the competent authority in Member States receiving a passported registration document or universal registration document shall not undertake any scrutiny or approval of the registration document, universal registration document and any amendments thereto.

This creates a division of responsibility between the competent authority that approved the registration document or universal registration document and the competent authority in the home Member State for the prospectus approval that approves the securities note and summary. From this, ESMA understands that:

- the authority that approved the registration document or universal registration document is competent to approve any supplements to the information in the registration document or the universal registration document; and*
- the authority in the home Member State for the approval of the prospectus is competent to approve any supplements to information in the securities note.*

Consequently:

- where a prospectus and its registration document, or universal registration document, has been approved by just one competent authority, then a single document can be approved that is a supplement to the prospectus and to the registration document, or universal registration document, and securities note; and*
- where the registration document, or universal registration document, has been approved by one competent authority and the securities note (and the prospectus itself) has been approved by another competent authority, each competent authority can only approve as follows:*
- ???????the competent authority which approved the registration document, or universal registration document, can only approve a document which is a supplement to the registration document, or universal registration document, and to the prospectus; and*

- *the competent authority which approved the securities note (and the prospectus itself), can only approve a document which is a supplement to the securities note and to the prospectus.*

Withdrawal rights

The provision in Article 10(1) of the Prospectus Regulation stating that withdrawal rights shall not apply in relation to a supplement to a registration document is only valid for a registration document before it is a constituent part of a prospectus.

Therefore, investors have the right to withdraw their acceptances in accordance with Article 23(2) of the Prospectus Regulation when a prospectus of which a registration document or a universal registration document is a constituent part is supplemented.

If a registration document or a universal registration document is no longer a constituent part of a prospectus

A prospectus may have a life that is shorter than the validity period, under Article 12 of the Prospectus Regulation, of the registration document or the universal registration document that is a constituent part of the prospectus. In such cases:

- *if a registration document is no longer a constituent part of a prospectus, then the information in that registration document is updated in accordance with Article 10(1) of the Prospectus Regulation:*
- *if a universal registration document is no longer a constituent part of a prospectus, then the information in that universal registration document should be updated via an amendment in accordance with Articles 9(7) and 9(9) of the Prospectus Regulation. See further the Q&A relating to updating the information in a universal registration document before it is a constituent part*

of a prospectus.

Figure 1: Updating the information in registration documents (RDs) and universal registration documents (URDs) after they are a constituent part of a prospectus

ESMA Answer File

QA_974___3.3.pdf

ESMA_QA_1001

Submission Date

11/02/2019

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Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Public offer

Subject Matter

Supplements - Non-relevant information in relation to a published prospectus that does not trigger the obligation to publish a supplement

Question

ESMA considered how to deal with information that arises after the publication of the prospectus which is not significant within the meaning of the Prospectus

Regulation but could be useful for investors (i.e. information that is not capable of significantly affecting the assessment of the securities and therefore does not trigger the obligation to publish a supplement but is of interest to investors)?

ESMA Answer

12-07-2019

Original language

[ESMA31-62-1258 Prospectuses Q&A 8.2]

The Prospectus Regulation states that the text and the format of the prospectus, and any supplement thereto, which is made available to the public, shall at all times be identical to the original version approved by the home Competent Authority according to Article 21(10). Moreover, according to Article 23(1), every significant new factor, material mistake or material inaccuracy relating to the information included in the prospectus which may affect the assessment of the securities shall be published through a supplement to the prospectus. There are cases where the information is not significant within the meaning of the Prospectus Regulation that could, however, be useful for investors. For example, where the prospectus contains mistakes or inaccuracies which are not material.

As prescribed by Article 21(10), the prospectus approved by the Competent Authority cannot be subsequently modified (apart from via supplement). However, in case the prospectus contains a mistake or inaccuracy that is not material or significant pursuant to Article 23(1) of the Prospectus Regulation, the issuer should be entitled to make an announcement to the market explaining the mistake or

inaccuracy.

The above comments are without prejudice to the obligations imposed by other legislation on issuers who have their securities admitted to trading on a regulated market or a multilateral trading facility, in particular the Market Abuse Regulation 596/2014.

No hay parametros en la URL.