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Additional Information

Level 1 Regulation
Transparency Directive (TD) Directive 2004/109/EC

Topic
Transparency

Subject Matter
Trading book exemption

Question
Is it possible for third country credit institutions and investment firms to apply the trading book exemption set out in Article 9(6) of the Transparency Directive 2004/109/EC (TD) or is the application of this exemption limited only to EU credit institutions and investment firms?

ESMA Answer

18-12-2023

Original language

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

Only credit institutions and investment firms, the trading book of which is regulated pursuant to Union law, may apply the trading book exemption provided by Article 9(6) of Directive 2004/109/EC.

Article 9(6) of Directive 2004/109/EC ('TD') states that shareholders that are credit institutions or investment firms shall have no obligation to notify the issuer about the proportion of voting rights held on the basis of shares in their trading book provided that:

a. the voting rights held in the trading book do not exceed 5 %; and

b. the voting rights attached to shares held in the trading book are not exercised or otherwise used to intervene in the management of the issuer.

With respect to the term 'trading book' , Article 9(6) refer s to Article 11 of Directive 2006/49/EC, which has meanwhile been repealed. Therefore, that reference is to be read as reference to the respective definitions in Article 4(1) , point (86) , of Regulation (EU) No 575/2013, and in Article 4(1) , point (54) , of Regulation (EU) 2019/2033.

These definitions define 'trading books' with regard to the positions held by credit institutions, as regulated under Regulation (EU) 575/2013 and by investment firms as regulated under Regulation (EU) 2019/2033. In addition, according to Recital 20 TD , the Member State s should be allowed to provide limited exemptions as regards holdings of shares in trading books of credit institutions and investment firms.

These definitions and provisions in those acts about the trading book lay down the appropriate scope of application of the exemption in Article 9(6) TD. As a result, credit institutions or investment firms referred to in Article 9(6) TD should be construed as those the

trading book of which is subject to Union rules on the trading book.

Third country credit institutions or investment firms are, in principle, not subject to Union law as regards their trading book. As such, the scope of application of Article 9(6) does not extend to those third country credit institutions or investment firms, nor is Article 9(6) covered by any equivalence provision in Union Law.

"**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.*"