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Additional Information

Level 1 Regulation
Prospectus Regulation 2017/1129

Topic
Public offer

Subject Matter
Application of Article 1(6b) (reverse acquistion)

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).

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[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.