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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;”.