

**Submission Date**

27/07/2021

# ESMA\_QA\_846

Status: Answer Published

## **Additional Information**

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### **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?

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 <sup>[1]</sup> 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<sup>[2]</sup>, the definition of securities<sup>[3]</sup> refers to transferable securities as defined in MiFID II<sup>[4]</sup>. Where the shares are transferable securities, they fall under the definition of equity securities set out in Article 2(b) of the Prospectus Regulation<sup>[5]</sup>.

#### **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.

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<sup>[1]</sup> 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).

<sup>[2]</sup> 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".