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.