

ESMA_QA_979

Status: Answer Published

Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Public offer

Subject Matter

Rights issue: communication by a custodian to its clients in a member state about pre-emption rights in relation to a public offer of new shares taking place in another EEA member state

Question

Is the communication from a custodian to its clients (normally under its contractual duty to inform them) in respect of a rights issue in another EEA Member State (where a prospectus has been approved) in itself an "offer of securities to the public" and therefore would not be permitted unless a passport had been obtained in order to make public offers into the EEA Member State of the clients of the custodian?

ESMA Answer

12-07-2019

Original language

[ESMA31-62-1258 Prospectus Q&A 4.3]

ESMA considers that a communication of a custodian bank informing its clients in one Member State about their pre-emption rights in relation to a public offer of new shares taking place in another Member State or in a third country does not mean that the custodian is making a public offer in the former Member State. The PR should not be interpreted in a way that limits cross border share ownership, restricts the ability of custodians to comply with their contractual obligations or restricts shareholders' ability to exercise their pre-emption rights.

Such a communication would constitute a public offer by the custodian only if it meets the following two conditions:

- It provides to the shareholders the terms of the offer and of the shares that would enable them to decide to subscribe the share and
- The custodian acts on behalf of the offeror or issuer when making such a communication.