ESMA_QA_980

Submission Date
12/07/2019

Status: Published Answer Updated

Additional Information

Level 1 Regulation
Prospectus Regulation 2017/1129

Topic
Public offer

Subject Matter
Subscription of securities by residents of a country where the public offer is not taking place (Updated 09/09/2026)

Question
Is it possible for residents in Member State 'A' (where a public offer does not take place) to subscribe for securities in Member State 'B' (where the public offer takes place directly or through their financial intermediaries acting on behalf of these investors**? (Updated 09/09/2026)

ESMA Answer

09-09-2026

Original language

Yes. There is no need for the offeror to publish a prospectus in Member State A, as no public offer is made in that country. But this does not prevent investors in that country from subscribing or buying the securities which are subject to a public offer in another Member State. What is relevant in this case is that a prospectus is published in Member State B where the public offer takes place. **(Updated answer 09/09/2026)**

Footnote ** (see double asterisk in question)

There are different situations where investors in Member State 'A' might find out that a public offer is taking place in Member State 'B' even when there is no public offer in the former. For example, investors in Member State 'A' find out about the offer in Member State 'B' by their own means, without a communication to them in the sense of Article 2 (d) of the Prospectus Regulation; the offer in Member State 'A' is exempt from the prospectus obligation because it falls under one of the cases set out in Article 1(4) or 3(2) of the Regulation; investors are informed of the public offer in Member State 'B' by their financial intermediaries acting under their contractual duty as custodians to inform their clients.

~~12/07/2019~~

~~**Subject Matter:** Subscription of securities by residents of a country where the public offer is not taking place~~

~~**Question:** Is it possible for residents in Member State 'A' (where a public offer does not take place) to subscribe for securities in Member State 'B' (where the public offer takes place directly or through their financial intermediaries acting on behalf of these investors)?~~

~~**Answer:**~~

~~[ESMA31-62-1258 Prospectus Q&A 4.4]~~

~~Yes. There is no need for the offeror to publish a prospectus in Member State A, as no public offer is made in such a country. But this does not prevent investors[1] in that country to subscribe or buy the securities which are subject to a public offer in another Member State.~~

What is relevant in this case is that a prospectus is published in Member State B where the public offer takes place.

Footnote 1

There are different situations where investors in Member State 'A' might find out that a public offer is taking place in Member State 'B' even when there is no public offer in the former. For example, investors in Member State 'A' find out about the offer in Member State 'B' by their own means, without a communication to them in the sense of Article 2 (d) of the Prospectus Regulation; the offer in Member State 'A' is exempt from the prospectus obligation because it falls under one of the cases set out in Article 1(4) or 3(2) of the Regulation; investors are informed of the public offer in Member State 'B' by their financial intermediaries acting under their contractual duty as custodians to inform their clients.