ESMA_QA_981

Submission Date
27/07/2021

Status: Answer Published

Additional Information

Level 1 Regulation
Prospectus Regulation 2017/1129

Topic
Public offer

Subject Matter
Offer of securities to the public

Question
Is the simple indication of secondary market prices to be considered an offer to the public? For example: an issuer's securities are admitted to trading on a regulated market X in Member State A. The issuer regularly publishes secondary market prices of its securities on market X on its website. In compliance with the requirements of Article 1(5)(j), points (i) to (vi) of the Prospectus Regulation, the issuer applies for the admission of its securities on another regulated market Y in Member State B without publishing a prospectus. After the completion of the issuer's dual listing, secondary market prices of the issuer's securities on both markets are in the public domain, e.g. by way of publication on the relevant stock exchanges' websites. Is the issuer allowed to also publish all secondary market prices, i.e. regulated market X and regulated market Y prices, on its website besides information about its

business and security identification numbers without publishing a prospectus?

ESMA Answer

27-07-2021

Original language

[ESMA31-625-1258 Prospectus Q&A 4.5]

Answer provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation

In general, the simple indication of secondary market prices should not be considered an offer of securities to the public unless they are accompanied by a communication constituting an offer of securities to the public or unless there are additional circumstances which might altogether amount to an offer of securities to the public, in accordance with the definition laid down in the Prospectus Regulation[1], Article 2(d)[2]. This interpretation is supported by recital 14[3] of the Prospectus Regulation, according to which the publication of bid and offer prices is not to be regarded in itself as an offer of securities to the public and therefore it does not require per se the publication of a prospectus. In the case described above, the issuer should be allowed to repeat on its own website secondary market prices of its securities trading on regulated markets that are published by the relevant stock exchanges along with securities identification numbers and factual information about its business. Such publication does not necessarily lead to an offer of securities to the public. However, the very specific elements of each situation should be analysed on a case by case basis.

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 prejudge 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] Ibid "[...] a communication to persons in any form and by any means, presenting sufficient information on the terms of the offer and the securities to be offered, so as to enable an investor to decide to purchase or subscribe for those securities. This definition also applies to the placing of securities through financial intermediaries".

[3] Ibid "The mere admission of securities to trading on an MTF or the publication of bid and offer prices is not to be regarded in itself as an offer of securities to the public and is therefore not subject to the obligation to draw up a prospectus under this Regulation. A prospectus should only be required where those situations are accompanied by a communication constituting an ‘offer of securities to the public’ as defined in this Regulation".