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Additional Information

Level 1 Regulation
Prospectus Regulation 2017/1129

Topic
Public offer

Subject Matter
Home Member State - Choice of the home Member State

Question
An issuer, following Article 2(m)(ii) of the PR, chooses as home Member State for the approval of its base prospectus a Member State different than that where it has its registered office. Is the base prospectus approved by the competent authority of the chosen home Member State valid to make offers and/or admissions to trading exclusively in countries different than the home (i.e. no offer or admission is made in the home)? For example: an

issuer that has its registered office in Finland, following Article 2(m)(ii), chooses Cyprus as Home Member State for the approval of its base prospectus. Is the base prospectus approved by Cyprus valid to make offers and/or admissions to trading exclusively in countries different than Cyprus (i.e. no offer or admission is made in Cyprus)?

ESMA Answer

27-07-2021

Original language

[ESMA 31-62-1258 Prospectus Q&A 6.3]

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

Article 2(m)(ii) of the Prospectus Regulation[1] allows, for certain types of non-equity securities, to choose the home Member State amongst the Member State where the issuer has its registered office, or where the securities were or are to be admitted to trading on a regulated market or where the securities are offered to the public, at the choice of the issuer, the offeror or the person asking for admission to trading on a regulated market. In the case of a base prospectus, the issuer should have a reasonable expectation to make an issue under the programme which will be admitted to trading or offered to the public in the home Member State that it has chosen (in the example, Cyprus) and it must do so within the 12 months of validity of the base prospectus. Once a base prospectus has been approved, it is valid for all issues made under it irrespective whether such issues will be admitted to trading or offered to the public in the home Member State. However, if the issuer fails to do at least one offer or admission to trading in the chosen home Member State during the 12 months validity of the base prospectus, the issuer will not be in compliance with Article 2(m)(ii) and the competent authorities of the home and host Member States may take appropriate action (for example, sanctions in accordance with Article 38 of the Prospectus Regulation as implemented into their national legislation).

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.

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[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).