ESMA_QA_1002

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12/07/2019

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Additional Information

Level 1 Regulation
Prospectus Regulation 2017/1129

Topic
Public offer

Subject Matter
Supplements - Application of Article 23(3) where an entity distributes its own securities (Updated 09/09/2026)

Question
Article 23(3) of the Prospectus Regulation sets out different obligations for issuers and financial intermediaries. Where a financial intermediary distributes its own securities should it be treated as an issuer or a financial intermediary? (Updated 09/09/2026)

ESMA Answer

09-09-2026

Original language

The Prospectus Regulation does not define "financial intermediary", but ESMA generally considers thems to be entities who are allowed by EU or national legislation to distribute securities on behalf of others. Therefore, Article 23(3) obligations apply when distributing such securities.

If the financial intermediary is also the issuer (e.g. credit institutions, investment firms or management companies), ESMA considers that they should still adhere to Article 23(3) when distributing their own securities. This understanding appears to be in line with both Recital 45 and Article 4(1) point 5 of MiFID II (Directive 2014/65/EU) and is consistent with the principle of investor protection. **(Updated answer 09/09/2026)**

~~12/07/2019~~

~~**Subject matter:** Supplements - Application of Article 23(3) where an entity distributes its own securities~~

~~**Question:** Article 23(3) of the Prospectus Regulation sets out different obligations for issuers and financial intermediaries. Where a financial intermediary distributes its own securities should it be treated as an issuer or a financial intermediary?~~

~~**Answer:**~~

~~[ESMA31-62-1258 Prospectuses Q&A 8.3]~~

~~Although the concept of a financial intermediary is not defined in the Prospectus Regulation, ESMA generally understands financial intermediaries to be those persons who are allowed, by EU or national legislation, to distribute securities issued by other entities. Consequently, ESMA believes that the obligations of Article 23(3) of the Prospectus Regulation addressed~~

~~to financial intermediaries clearly apply to those persons when they distribute securities issued by other entities.~~

~~However, the situation is slightly more equivocal where the financial intermediary distributing the securities is also the issuer, e.g. credit institutions, investment firms or management companies distributing securities they have issued themselves.~~

~~To provide clarity in respect of the latter situation, above, ESMA believes that financial intermediaries should also comply with the obligations addressed to financial intermediaries in Article 23(3) of the Prospectus Regulation, when distributing securities that they issue themselves. This understanding appears to be in line with both Recital 45 and Article 4(1) point 5 of MiFID II (Directive 2014/65/EU) and is consistent with the principle of investor protection.~~