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Additional Information

Level 1 Regulation

Prospectus Regulation 2017/1129

Topic

Publication of prospectus

Historic Question Reference

N/A

Additional Legal Reference

Articles 1(4), 1(5) and 1(6) of the Prospectus Regulation

Subject Matter

Scope of the word "shares" in certain exemptions from the obligation to publish a prospectus in Articles 1(4), 1(5) and 1(6) of the Prospectus Regulation.

Question

What is the meaning of the term "shares" in Articles 1(4), 1(5) and 1(6) of the Prospectus Regulation? More specifically, does this term include depository receipts for shares issued

with the cooperation of the issuer of the underlying shares?

ESMA Answer

12-09-2024

Original language

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

Shares and depositary receipts are two different types of transferable securities as defined in point (44) of Article 4(1) of Directive 2014/65/EU. Articles 1(4), 1(5) and 1(6) of the Prospectus Regulation specify which specific types of securities are concerned by each specific exemption to the obligation to publish a prospectus set out in Article 3(1) of the Prospectus Regulation. Since these provisions contain exceptions to the general rule, they should be strictly interpreted. Exemptions regarding shares should not be construed as also covering depositary receipts issued with the cooperation of the issuer of the underlying shares.

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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.