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Additional Information

Level 1 Regulation

Transparency Directive (TD) Directive 2004/109/EC

Topic

Transparency

Historic Question Reference

[ESMA31-67-127 TD Q15]

Subject Matter

Designation of an agent for the exercise of financial rights; TD Art. 17 and 18

Question

Question a: Articles 17 and 18 of the TD require issuers to ensure that all the facilities and information necessary to enable shareholders / debt securities holders to exercise their rights

are available in the home Member State. Each issuer is also required to designate as its agent a financial institution through which shareholders / debt securities holders may exercise their financial rights.

Must the issuer appoint as its agent a financial institution domiciled in the home Member State? Or is it sufficient to appoint a financial institution domiciled in another Member State?

Question b: Before the TD was adopted, similar provisions were included in Articles 65(2)(c) and 78(2)(b) of the Directive 2001/34/EC. However, there was an exemption for issuers providing financial services: "In particular, it [the issuer] must: (...) designate as its agent a financial institution through which holders of debt securities may exercise their financial rights, unless the under-taking itself provides financial services."

Does the TD require issuers who are financial institutions to appoint as an agent a financial institution other than itself?

ESMA Answer

25-02-2011

Original language

[ESMA31-67-127 TD Q15]

Answer a: It is up to the issuer to ensure that facilities to exercise the (financial) rights of holders of shares / debt securities are available in the home Member State. However, the domicile of the agent does not have to be in the home Member State.

Answer b: No, issuers who are financial institutions may still appoint themselves as an agent.