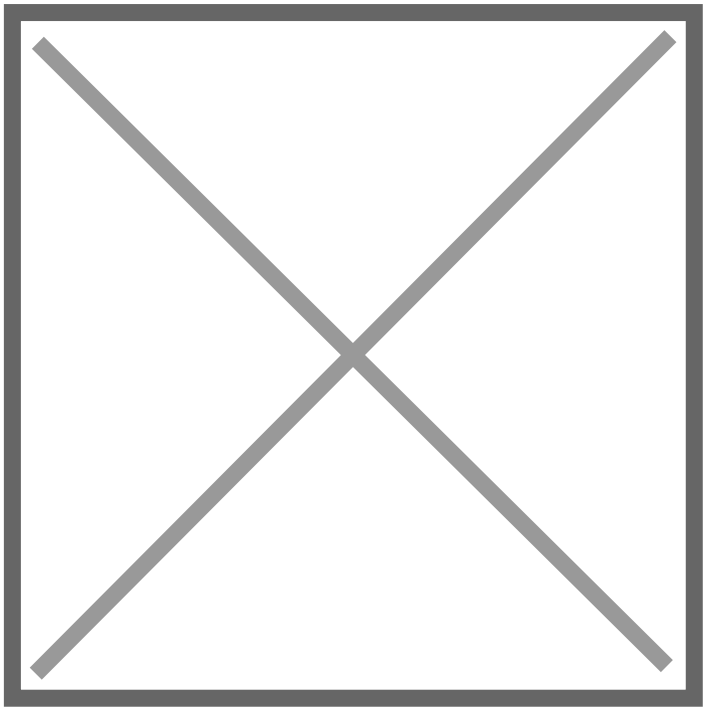


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Additional Information

Level 1 Regulation
Transparency Directive (TD) Directive 2004/109/EC
Topic
Transparency
Historic Question Reference
[ESMA31-67-127 TD Q16]
Subject Matter
The requirement to make regulated information public; TD Art. 21(1)
Question
Question a: Is the obligation to make regulated information (as defined in Article 2(1)(k) of the TD) public fulfilled if the issuer only discloses the regulated information to the public in a manner ensuring fast access to such information on a non-discriminatory basis, or must the issuer also disseminate the information throughout the Community?

Question b: Does making the regulated information available to the official appointment mechanism (OAM) meet the criteria of making regulated information public?
ESMA Answer
23-10-2015

Original language

[ESMA31-67-127 TD Q16]

Answer a: The Articles requiring issuers to make public regulated information (e.g. Articles 4, 5, 6, 12(6) …of the TD) together with Article 21(1) of the TD establish the legal framework for issuers when providing access to regulated information. In accordance with those Articles, when issuers[1] disclose regulated information making it available to the public in a manner ensuring fast access to such information, they are also required to:
a) disseminate it to the public throughout the Union in compliance with at least the minimum standards set out in Article 12 of Commission Directive 2007/14/EC; and,
b) make regulated information available to the national official appointment mechanism (OAM) for its central storage.

Additionally, when the issuer, or any person having requested, without the issuer's consent, the admission of its securities to trading on a regulated market, discloses regulated information, it shall at the same time file that information with the home national competent authority (Article 19 of the TD).

Furthermore, in case of annual reports (Article 4 of the TD), half year reports (Article 5 of the TD) and payments to government reports (Article 6 of the TD), issuers, or the person who has applied for admission to trading on a regulated market without the issuer's consent, are required to ensure that regulated information remains publicly available for at least 10 years.

Disclosure and dissemination of regulated information may be done either by the issuer or by a third-party. While disclosure of regulated information requires making the information available to the public, dissemination of regulated information requires active distribution from the issuers to the media which may take place through different ways such as communication agencies, news-papers, internet, use of service providers or OAMs[2], in order to fulfill requirements of Article 12 of Commission Directive 2007/14/EC.

The requirement of making regulated information available to the public is fulfilled when regulated information is disseminated to the public. However, the requirement to disseminate regulated information is not fulfilled when the information is only made public.

Answer b: No. Making regulated information available by filing it with the OAM does not meet the criteria of making regulated information public. The OAM is in charge of the storage of regulated information. The storage of regulated information (filing with the OAM) and making public regulated information are two separate obligations imposed on the issuer.

Nevertheless, when national legislation allows for it, OAMs may also disseminate regulated information to the public throughout the Union in addition to its storage[3] .

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[1] Article 19 and 21 of the TD refers to "issuer or the person who has applied for admission to trading without the issuer's consent".

[2] In case national legislation allows OAMs to disseminate regulated information throughout the Union in addition to its storage.

[3] The Commission Recommendation of October 2007 on the electronic network of officially appointed mechanisms for the central storage of regulated information referred to in Directive 2004/109/EC of the European Parliament and of the Council provides that OAM should allow investors and interested parties to easily access regulated information.