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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 Q18]

Subject Matter
Dissemination of regulated information; Implementing Directive 2007/14/EC (L2D) Art. 12

Question
Many issuers use service providers for the dissemination of regulated information. In some Member States, these service providers are required to be approved by the competent

authority, whereas in other Member States such authorisation is not required.

Article 12 of the L2D sets the minimum standards for the dissemination of regulated information in order to “ensure that investors, even if situated in a Member State other than that of the issuer, have equal access to regulated information” (first sentence of recital 16 of the L2D). Pursuant to Article 12(4) of the L2D “the issuer (…) shall not be responsible for systemic errors or shortcomings in the media to which the regulated information has been communicated.”

When the issuer uses a service provider for dissemination of regulated information, will the service provider be covered by the definition of media? If not, what kind of recovery procedures for system failures should a service provider have in order to ensure the dissemination of regulated information in a manner ensuring fast access to such information on a non-discriminatory basis as required by article 21(1) of the TD?

ESMA Answer

23-10-2015

Original language

[ESMA31-67-127 TD Q18]

The second sentence of recital 16 of the L2D states: "*Issuers should ensure that those minimum standards [for the dissemination of regulated information] are met, whether by disseminating the regulated information by themselves or by entrusting a third party to do so on their behalf*." Therefore, a service provider cannot be considered being covered by the exemption of Article 12(4) of the L2D.

Dissemination of regulated information may take place through different ways including entrusting services providers to do so. ESMA considers that issuers are ultimately legally responsible for ensuring that the requirements of Article 21 of the TD are met. Therefore, issuers’ responsibilities in relation to dissemination of regulated information are only fulfilled when information reaches the media, even if a service provider is used to do so.[1] The responsibility under the TD remains within the issuer regardless of any contractual obligation

and/or responsibilities that may derive from the contract between the issuer and the service provider.

In its Level 2 Advice (ref. CESR/05-407) ESMA has set out standards for issuers using a service provider. ESMA considers that whenever issuers make use of service providers to meet their obligations under Article 21 of the TD, the issuers should ensure that the service provider meets the requirements set out in paragraphs 47–59 of the Level 2 Advice. Pursuant to these standards, the recovery service of a service provider must be available during the operational hours of the service provider (i.e. 24 hours a day, seven days a week) in order to ensure the timely receipt and dissemination of regulated information to media.

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[1] Paragraph 9 of CESR's advice (ref. CESR/05-407).