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Additional Information

Level 1 Regulation
Undertakings for Collective Investment in Transferable Securities Directive (UCITS) Directive 2009/65/EC

Topic
UCITS global exposure

Subject Matter
Supervision of branches

Question
What are the supervisory responsibilities of competent authorities in host Member States when a UCITS management company provides investment services through a branch established in the host Member State?

ESMA Answer

01-07-2018

Original language

[ESMA 34-43-392 UCITS Q&A, Section 1, 7a]

Under both the UCITS and the AIFM Directives, supervisory powers of competent authorities in relation to branches of UCITS management companies or alternative investment fund managers (AIFMs) established in a Member State that is not the home Member State are shared. The competent authority of the Member State in which the branch is located (host Member State) is responsible for the supervision of the branch's compliance with conduct rules referred to in Article 17(5) of the UCITS Directive and Article 45(2) of the AIFMD and the competent authority of the Member State in which the UCITS management company or the alternative investment fund manager is established (home Member State) is responsible for the supervision of the other requirements provided under the relevant applicable framework.[1]

Neither the UCITS Directive nor the AIFMD provides for an explicit framework for the allocation of supervisory responsibilities and powers for those cases where UCITS management companies or AIFMs are authorised to carry out investment services set out in Article 6(3) of the UCITS Directive and Article 6(4) of the AIFMD and have branches providing those services in other Member States. ESMA is of the view that responsibilities of home and host Member States should be identified similarly to, and consistently with, the general framework established for the provision of activities pursued by UCITS management companies and AIFMs through branches as well as with the MiFID II framework regulating the supervision on the provision of investment services across the EU. This approach is in line with the division of responsibilities provided under the MiFID II framework. In accordance with Article 35(8) of MiFID II, the competent authority of the host Member State has the responsibility for ensuring that the services provided by the branch of an investment firm or a credit institution in its territory comply with the MiFID II requirements under Articles 24 ("General principles and information to clients") and 25 ("Assessment of suitability and appropriateness and reporting to clients") of MiFID II, which also apply to UCITS management companies and AIFMs providing investment services.

[1] See Article 17(4) and (5) of UCITS Directive and Article 45(1) and (2) of AIFMD. On this subject, see also “Notification frameworks and home-host responsibilities under UCITS and AIFMD”, an ESMA Thematic Study among National Competent Authorities https://www.esma.europa.eu/sites/default/files/library/esma34-43-340_final_report_on_thematic_study_on_notification_frameworks.pdf