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Additional Information

Level 1 Regulation
Alternative Investment Fund Managers Directive (AIFMD) Directive 2011/61/EU

Topic
Depositaries

Subject Matter
Depositaries

Question
According to Article 89(1)(c) of Commission Delegated Regulation (EU) No 231/2013 as modified by Commission Delegated Regulation (EU) 2018/1618 and Article 13(1)(c) of Commission Delegated Regulation (EU) 2016/438 as modified by Commission Delegated Regulation (EU) 2018/1619 reconciliations are conducted as frequently as necessary between the depositary's internal accounts and records and those of any third party to whom safekeeping has been delegated. What does this mean in case of use of a tri-party collateral manager, which is not the depositary?

ESMA Answer

20-07-2022

Original language

[ESMA 34-32-352 AIFMD Q&A, Section 6, 16]

Answer provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation[1]

In this case the tri-party collateral manager is appointed by the asset manager in accordance with Article 20 of Directive 2011/61/EU or in accordance with Article 13 of Directive 2009/65/EC; it also needs to be the delegate of the depositary in accordance with Article 21(11) of Directive 2011/61/EU or in accordance with Article 22a(2) of Directive 2009/65/EC. The tri-party collateral manager is required to transmit the end-of-day positions on a fund-by-fund basis or, if applicable, on a compartment-by-compartment basis. The information provided allows the depositary to record the end-of-day positions and allows it to comply with the provisions (a) of Article 98(2a)(a) (as inserted by Delegated Regulation (EU) 2018/1618) and in particular point (ii) thereof, and (b) with the provisions under Article 15(2a)(a) (as inserted by Delegated Regulation (EU) 2018/1619), and in particular point (ii) thereof. Thus, the information provided allows the depositary (for both Regulations) to verify that the quantity of the identified financial instruments recorded in the financial instruments accounts opened in its books matches the quantity of the identified financial instruments held in custody by the third party.

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[1] The answers provided by the European Commission 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.