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Additional Information

Level 1 Regulation

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

Topic

AIFMD scope

Additional Legal Reference

Article 6 of Directive 2009/65/EC

Subject Matter

Management of AIFs by UCITS management companies

Question

Pursuant to Article 6(2) of the UCITS Directive, are UCITS management companies allowed to manage AIFs as a registered AIFM under Article 3 of Directive 2011/61/EU (AIFMD)?

ESMA Answer

13-06-2023

Original language

[ESMA34-43-392 UCITS Q&A, Section I, Q&A 8a]

Yes. UCITS management companies are allowed to manage AIFs as AIFMs registered under Article 3 AIFMD. Pursuant to Article 6(2) of the UCITS Directive, management companies can manage other collective investment vehicles, for which the management company is subject to prudential supervision. Registered AIFMs are subject to the prudential supervision under AIFMD to the degree commensurate with their complexity and systemic relevance for the stability of the financial system. Pursuant to Article 3(3) and (4) AIFMD, sub-threshold AIFMs shall be at least registered by the home competent authorities and identify the AIFs they manage providing information on the employed investment strategies. Such AIFMs are also subject to the periodic supervisory reporting obligation. There is national discretion to make those requirements stricter. Importantly, the national competent authorities can exert any of the supervisory powers enumerated in Article 46 AIFMD. This allows concluding that AIFMs registered in accordance with Article 3(3) AIFMD should be considered as prudentially supervised within the meaning of Article 6(2) of the UCITS Directive.

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.