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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 pension schemes by UCITS management companies

Question

Pursuant to Article 6(2) of the UCITS Directive, are UCITS management companies allowed to manage pension schemes under Directive (EU) 2016/2341?

ESMA Answer

13-06-2023

Original language

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

Yes, provided that it is authorised by national legislation implementing the UCITS Directive. The scope of the UCITS license allows UCITS management companies to undertake as core services only the management of UCITS. However, Article 6(3), point (a), of the UCITS Directive provides the possibility for Member States to authorise UCITS management companies to provide, in addition to the management of UCITS, the management of pension funds' portfolios, in accordance with mandates given by investors on a discretionary, client-by-client basis, where such portfolios include one or more of the instruments listed in Section C of Annex I to Directive 2004/39/EC. Therefore, Member States can authorise UCITS management companies, in addition to the management of UCITS, to manage investment portfolios of pension funds only on a mandate basis, acting as service providers and not as investment managers of the pension funds.

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.