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Additional Information

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

Topic
UCITS eligible assets and investment restrictions

Subject Matter
Independence of management boards and supervisory functions - Group links, independence and cooling-off periods

Question
Where a group link exists for the purpose of Article 24 of the Commission Delegated Regulation (EU) 2016/438 (“UCITS V Level 2”), does a person who served in the management body or supervisory body of an entity within the group or was otherwise

employed by such an entity fulfil the independence requirement under Article 24(2) of the UCITS V Level 2 where the person has ceased any function within the entity?

ESMA Answer

01-07-2017

Original language

[ESMA 34-43-392 UCITS Q&A, section 8, Q&A 1]

A person who served in the management body or supervisory body of an entity or was otherwise employed by such an entity should be deemed to fulfil the independence requirement only after an appropriate cooling-off period following the termination of his/her relationship with the relevant entity. That period should start from the final payment of any outstanding remuneration due to him/her which entails a margin of discretion from the entity (e.g. in case of any portion of variable remuneration which is deferred and still subject to contraction, including through malus or clawback arrangements) and is linked to his/her previous employment or other relationship with that entity. Non-discretionary outstanding payments from the entity to the person should not be taken into account for this purpose.

Without prejudice to any requirements established under the relevant national corporate governance rules or codes, the cooling-off period should be proportionate to the length of the employment or other relationship that the individual had with any of the companies within the group and to the type of functions performed within such company(ies).