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Additional Information

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

Topic
Depositaries

Subject Matter
Depositaries as counterparties in a transaction of assets that they hold in custody

Question
According to Article 22(7) of the UCITS Directive the depositary (or any third party to which the custody function has been delegated) shall not reuse the assets they hold in custody for their own account. Does this provision imply that a depositary (or a delegated third party) should never act as counterparties in a transaction of assets that they hold in custody

(including, but not limited to, transfer, pledge, sale and lending of those assets)?

ESMA Answer

01-07-2018

Original language

[ESMA 34-43-392 UCITS Q&A, section 10, Q&A 1]

No. A depositary (or a delegated third party) should be able to act as counterparties in a transaction of assets that they hold in custody, provided that (i) the four conditions under Article 22(7)(a) to (d) of the UCITS Directive are complied with, and (ii) conflicts of interest are properly managed and (iii) the transaction is conducted on an arm-length basis.