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Additional Information

Level 1 Regulation

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

Topic

Depositories

Subject Matter

Distinction between depositary tasks and mere supporting tasks

Question

The UCITS Directive sets out strict restrictions under which depositaries are allowed to delegate the safekeeping of assets of UCITS, whereas the delegation of depositary functions pursuant to Article 22(3) and (4) of the UCITS Directive (i.e. monitoring of the cash flow and oversight functions) is not permitted. Recital 42 of the AIFMD states that “delegation of

supporting tasks that are linked to its depositary tasks, such as administrative or technical functions performed by the depositary as a part of its depositary tasks, is not subject to the specific limitations and requirements set out in the AIFMD". Does this principle also apply to UCITS depositaries and if so, what are 'supporting tasks that are linked to depositary tasks such as administrative or technical functions performed as part of the depositary tasks' and under which conditions would it be possible to entrust third parties with such tasks?

ESMA Answer

01-06-2019

Original language

[ESMA 34-43-392 UCITS Q&A, section 10, Q&A 2]

The answer refers to supporting tasks linked to the depositary tasks, such as administrative or technical functions performed as part of the depositary tasks, only. Supporting tasks that are linked to depositary tasks such as administrative or technical functions performed as part of the depositary tasks listed under Article 22(3) and (4) of the UCITS Directive could be entrusted to third parties where all of the following conditions are met:

- i. the execution of the tasks does not involve any discretionary judgement or interpretation by the third party in relation to the depositary functions;
- ii. the execution of the tasks does not require specific expertise in regard to the depositary function; and
- iii. the tasks are standardised and pre-defined.