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Additional Information

Level 1 Regulation
Regulation 2020/1503 - European crowdfunding service providers for business

Topic
Safeguarding of client assets

Subject Matter
Use of Special Purpose Vehicles

Question
When should an entity be considered as an SPV within the meaning of point (q) of Article 2(1)
of the ECSPR ?

ESMA Answer

26-05-2023

Original language

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Point (q) of Article 2(1) of the ECSPR defines SPV as “an entity created solely for, or which solely serves the purpose of, a securitisation within the meaning of point (2) of Article 1 of Regulation (EU) No 1075/2013 of the European Central Bank”.

Point (2) of Article 1 of Regulation (EU) No 1075/2013 of the European Central Bank defines securitisation as:

“a transaction or scheme whereby an entity that is separate from the originator or insurance or reinsurance undertaking and is created for or serves the purpose of the transaction or scheme issues financing instruments to investors, and one or more of the following takes place:

(a) an asset or pool of assets, or part thereof, is transferred to an entity that is separate from the originator and is created for or serves the purpose of the transaction or scheme, either by the transfer of legal title or beneficial interest of those assets from the originator or through sub-participation; (…)”

On this basis, and keeping in mind the content of recital (22) of the ECSPR, when an entity (i) created for the purpose or used for the purpose of the transaction (i.e. financing of the project) and (ii) separated from the project owner, is (iii) interposed between the crowdfunding project and investors and (iv) this entity receives, directly or indirectly, from the project owner a transfer of legal title or beneficial interest over the crowdfunding project, this entity should be regarded as a SPV within the meaning of point (q) of Article 2(1).

Should the competent authority reach this conclusion, on the basis of the information provided by the CSP, the SPV set-up would need to comply with the requirements of the ECSPR, notably Article 3(6).