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Additional Information

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

Topic
Control functions (Compliance, Risk and Audit)

Subject Matter
Use of Special Purpose Vehicles

Question
Can a CSP hold a participation in a SPV?

ESMA Answer

26-05-2023

Original language

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Article 8(1) provides that CSPs shall not have any participation in any crowdfunding offer on their platform. This requirement derives from the rationale included in recital (26) of the ESCPR whereby CSPs should operate as neutral intermediaries between clients on their crowdfunding platforms (i.e. projects owners and investors).

This means that the holding by a CSP of a participation in a SPV or any other entity interposed between the crowdfunding project and investors is not possible under the ECSPR unless it is 13 demonstrated by the CSP to the national competent authority that such participation does not equal a participation in the underlying crowdfunding offer and, as such, does not impair its neutrality vis-à-vis its clients.

A national competent authority may consider that a participation taken or held by the CSP does not equal a participation in the underlying crowdfunding offer and that the neutrality of the CSP is not impaired when it receives evidence that the taking or holding of a participation in a SPV does not create, for the CSP, a distinct economic incentive (i.e. an incentive other than the one linked to the receipt of service fees charged by the CSP) to the success of the crowdfunding offer or the performance of the underlying crowdfunding project and that, consequently, such participation does not have the potential to trigger a conflicts of interests for the CSP.

In practice, the nature of the participation of the CSP in a SPV and its potential impact on the neutrality of the CSP shall be assessed on a case-by-case basis by the competent authority. The following indicative characteristics may, among others, be considered when performing this assessment:

- nature and characteristic of the CSP's participation: (Is the participation by the CSP made in equity or through debt instruments? For an equity investment, what is the nature of the voting

rights awarded to the CSP in the SPV? What is the nature of the economic rights awarded to the CSP in relation to its participation in the SPV? How correlated are these economic rights to the success of the crowdfunding offer and of the performance of the crowdfunding project?)

- size/relative value of the CSP's participation. What is the value of the CSP's participation? What is its relative value compared to the overall participation reserved for investors

- Permanent or temporary nature of the participation (How long the participation is supposed to be held by the CSP? Is it supposed to be kept once the crowdfunding offer is completed?)

In agreement with its competent authority, a CSP may replicate, in the context of one or several other crowdfunding offers, a SPV set-up on which the competent authority has opined, without needing to seek the view of the competent authority every time.