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Additional Information

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

Topic
Underwriting and placing

Subject Matter
Use of fiduciary (nominee) structures in equity crowdfunding

Question
Can CSPs use nominee structures as part of their operations in relation to transferable securities or admitted instruments for crowdfunding purposes? (Edited)

ESMA Answer

04-07-2025

Original language

The terms “nominee structure”, “nominee service”, or “nominee” are used by market participants in the field of crowdfunding to refer to a wide range of practices often aiming at aggregating investors. ESMA notes that the concept of “nominee” is not defined in the ECSPR.

ESMA further notes that the ECSPR does not explicitly prohibit ‘nominee entities’ from offering ‘nominee services’ related to the operation of a crowdfunding platform, the ‘nominee’ entity being involved at the initiative of the crowdfunding service provider or of the project owner.

ESMA is nevertheless of the view that the provision of such ‘nominee’ services’, being part of the “*operation of the crowdfunding platform*” within the meaning of Article 1(1) of the ECSPR should (i) be described in the application submitted to the authorising competent authority under Article 12 of the ECSPR and (ii) comply with the provisions of the ECSPR.

ESMA underlines that CSPs shall inform the authorising competent authority – at the time of the authorisation or, if the authorisation has already been granted, prior to implementation of their intention use a nominee structure. Information should include a detailed description about the ‘nominee’ structure that they intend to use, as well as the div of the nominee agreement between the nominee structure and investors with specific consideration of the arrangements concerning ownership, voting and exit rights, costs and implications in terms of applicable national laws, as requested by the authorising competent authority. The information provided shall enable the competent authority to perform a comprehensive assessment of the legal features of the nominee entity, the nominee agreement, and to determine whether the suggested ‘nominee structure’ is compliant with the ECSPR, notably, but not limited to, with the provisions listed below.

- Point (a)(ii) of Article 2(1):

Point (a)(ii) of Article 2(1) of the ECSPR and Recital 22 make clear that, pursuant to the ECSPR, the investment by an investor in a crowdfunding project shall be direct, in the sense that only transferable securities and admitted instruments for crowdfunding purposes issued by project owners or a special purpose vehicle can be purchased by crowdfunding investors on a crowdfunding platform authorised in accordance with the ECSPR. This means that the decision as to which crowdfunding project should be financed should aways be left to investors. ESMA therefore considers that nominee structures may provide their services in the context of crowdfunding services only once the relevant investor has taken an investment decision in respect of the specific project in which it intends to invest.

CSPs wishing to use a nominee structure should also carefully assess any structure in which investors' funds are not used by the nominee structure to purchase the transferable securities or the admitted instruments for crowdfunding purposes issued by a project owner or an SPV as indicated by the relevant investor in their investment decision, as such arrangements are unlikely to comply with Point (a)(ii) of Article 2(1) of the ECSPR.

Likewise, CSPs wishing to approve a new crowdfunding project on its platform are expected to ensure that no such arrangements have been set up by said project owner.

- Article 10(3) of the ECSPR

When nominee services are performed in relation to transferable securities or admitted instruments for crowdfunding purposes offered on a crowdfunding platform in accordance with the ECSPR, and these services include the provision of custody services, the CSPs shall ensure that the 'nominee structure' complies with Article 10(3) of the ECSPR:

"*Transferable securities or admitted instruments for crowdfunding purposes offered on a crowdfunding platform, and which can be registered in a financial instruments account opened in the name of an investor or which can be physically delivered to a custodian, shall be held in custody by the crowdfunding service provider or by a third party. An entity providing custody services shall hold an authorisation in accordance with Directive 2013/36/EU or 2014/65/EU*".

CSPs are expected to provide the authorising competent authority with relevant information, as requested by the authorising competent authority, about the ‘nominee structure’ they wish to set up, be it at the time of the initial authorisation or after such authorisation is delivered. The information provided shall enable the competent authority to perform a case-by-case basis assessment aiming at determining whether the suggested ‘nominee structure’ involves the holding in custody, by the ‘nominee entity’, of transferable securities or admitted instruments for crowdfunding purposes. Indeed, while it is acknowledged that ‘nominee’ service and custody are usually considered as two distinct concepts, they may, in practice, overlap.

If the national competent authority concludes that the suggested nominee arrangement is structured in a way that the transferable securities or admitted instruments for crowdfunding purposes offered on the crowdfunding platform are held in custody by the entity acting as ‘nominee’, then this entity will be required to be authorised in accordance with Directive 2013/36/EU or 2014/65/EU as per Article 10(3) of the ECSPR.

This assessment will be performed by competent authorities based on applicable European and national law. The following elements may, *inter alia*, be considered for the purpose of this assessment.

1. Holding of assets/Safekeeping: CSPs will be required to provide relevant information enabling competent authorities to assess whether or not the ‘nominee’ entity holds the client’s assets and whether or not the ‘nominee’ entity appears as the legal owner of the assets (with the investor being the beneficial owner).

2. Administration/Ownership record keeping: CSPs will be required to provide relevant information enabling competent authorities to assess whether or not the ‘nominee’ entity keeps accurate records of ownership and/or perform administrative tasks in relation to the ownership of the transferable securities or admitted instruments for crowdfunding purposes.

3. Asset-Segregation: CSPs will be required to provide relevant information enabling competent authorities to assess whether or not the ‘nominee’ keeps track of the respective ownership of investors into the various crowdfunding projects offered on the crowdfunding platform through segregated accounts.

ESMA Q&A_801 may also be taken into account for the purpose of understanding the mentioned requirements with regard to the custody services[1].

- Article 19(1) of the ECSPR

When investing in a crowdfunding project implies for investors the entry into a specific ‘nominee’ agreement, ESMA is of the view that investors should be duly informed of this feature. ESMA also believes that the information concerning the use of nominee structures in the provision of crowdfunding services are included in the information that CSPs provide to clients and shall thus be fair, clear and not misleading, as indicated in Article 19(1) of the ECSPR.

Article 19(1) of the ECSPR states that “*All information … from crowdfunding service providers to clients about themselves, about the costs, financial risks and charges related to crowdfunding services or investments, about the crowdfunding project selection criteria, and about the nature of, and risks associated with, their crowdfunding services shall be fair, clear and not misleading*.”.

- Article 23 of the ECSPR

When investing in a crowdfunding project implies for investors to enter into a specific ‘nominee’ agreement, ESMA is also of the view that this information should be clearly disclosed to investors in the KIIS.

ESMA believes that the information provided to investors should include, where applicable, (i) the key features of the nominee agreement (including its purpose, the div on the ownership of the instruments, the exercise of investor rights etc. and how they comply with national law requirements), (ii) the costs of entering into such agreement as well as the main risks (e.g., with regard to the possible consequences of the nominee's bankruptcy) and (iii) information about the entity performing the service.

In particular, and in line with Article 23 of the ECSPR and Delegated Regulation 2022/2119[2]:

- When the nominee structure is deemed by the competent authority to provide custody services as referred to in Article 10(3) of the ECSPR, the relevant information on the div of the authorised entity performing the custody services shall be provided in the section "*Custody and delivery of [transferable securities] or [admitted instruments for crowdfunding purposes] to investors*" of the KIIS as referred to in Annex 1 (point (e) of Part D) of the ECSPR and as further explained in point (e) of Part D of the Annex to Delegated Regulation 2022/2119.

- Part D of the KIIS on *Information related to the offer of transferable securities and admitted instruments for crowdfunding purposes* as well as Part F of the KIIS on *Investor rights* should be duly reviewed and adapted to the case in which the legal ownership of financial instruments and admitted instruments for crowdfunding purposes is assigned to a nominee structure (and investors remain beneficial owners). ESMA believes that at least the following information should be provided in the KIIS:

- Clear indication that the decision to subscribe transferable securities and admitted instruments for crowdfunding purposes encompasses the entry into a 'nominee' agreement.

1. Concise explanation of the purpose of the ‘nominee’ agreement and of its functioning during the subscription, holding and sale and re-sale (exit) phases.

- Explanation of how the rights (ownership and voting) attached to the transferable securities and admitted instruments for crowdfunding purposes offered by the project owner or the SPV will be exercised and protected where legal ownership of the securities rests with the nominee entity, including a clear outline of the procedures by which investors may assert their rights, participate in decision-making, receive distributions, and address potential disputes. This disclosure should clarify any limitations or special processes that apply in such structures, ensuring investors understand how their beneficial interests are represented and safeguarded when a nominee acts on their behalf as the legal holder of the securities.

2. If the entry into a nominee agreement is not mandatory (i.e. if investors are able to subscribe for shares of the crowdfunding project without entering into a nominee agreement) or not.

- Part H of the KIIS on *Fees, information and legal redress of the KIIS* should provide information on the costs for investors associated with the provision of the nominee services.

Endnotes

1. Please see ESMA_QA_801

2. Commission Delegated Regulation (EU) 2022/2119 of 13?July 2022 supplementing Regulation (EU) 2020/1503 of the European Parliament and of the Council with regard to regulatory technical standards for the key investment information sheet.