

# **ESMA\_QA\_2648**

Status: Question Rejected

## **Additional Information**

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### **Level 1 Regulation**

Markets in Financial Instruments Directive II (MiFID II) Directive 2014/65/EU- Investor Protection and Intermediaries

### **Level 2 Regulation**

Regulation 2017/565 - MiFID II Delegated Regulation

### **Level 3 Regulation**

ESMA/2012/188 - Guidelines - Compliance function (MiFID)

### **Topic**

Outsourcing

### **Additional Legal Reference**

EBA/GL/2019/02 (EBA Guidelines)

### **Subject Matter**

Outsourcing; Critical and important functions; Principle of Proportionality

### Question

In light of the first subparagraph of Article 16(5) of Directive 2014/65/EU (MiFID II), as well as Article 2(3) and Article 30(1) of Commission Delegated Regulation (EU) 2017/565, can it be affirmed that where a management company has delegated to an entity the performance of crucial elements of the marketing of UCITS funds, including their registration and listing for marketing purposes, the activity of that entity in entering into brokerage and distribution agreements with third-party intermediaries for the purpose of marketing such funds constitutes outsourcing of a critical and important function?

Furthermore, and in the light of the EBA Guidelines on Outsourcing Arrangements (EBA/GL/2019/02), to what extent does the principle of proportionality guide the assessment carried out during the risk evaluation of such outsourcing arrangements? In particular, do factors such as the continuity and duration of the agreement with third-party intermediaries, the scope and materiality of the delegated tasks, and the frequency and regularity of such delegation have an impact on whether the relationship should be qualified as the outsourcing of a critical or important function under the above-mentioned instruments?