

# ESMA Update UCITS Q&A

The European Securities and Markets Authorities (“ESMA”) updated its Q&A document in June 2023 to address several additional questions in relation to interpretations of the Undertakings for Collective Investment Transferable Securities (“UCITS”) Directives. The updated questions relate to the powers of UCITS Management companies (“Mancos”), denotification procedures for UCITS and the extent of services that must be approved when passporting.

## Background

ESMA releases periodic updates to this live document to clarify interpretations of EU Legislation, namely the UCITS Directive in this case. The Q&A is not intended as a legal document but as guidance.

## UCITS and AIFs

Question 8a of the Q&A outlines that a UCITS Manco may manage an AIF where they register to provide this service under the Directive. This arises as the Directive provides that Mancos may manage other collective investment vehicles, for which the Manco is subject to prudential supervision, such as a periodic supervisory reporting obligation. Including further obligations applicable to Alternative Investment Fund Managers (AIFMs) is subject to the discretion of competent national authorities who may impose stricter requirements.

## Pensions

ESMA clarified in Question 8b that UCITS Mancos are permitted to manage pension schemes provided they are authorised for this purpose under national legislation. Where the Member State allows a UCITS Manco to manage pension schemes they are not allowed to act in the role as investment managers of the pension scheme but only in a service provider capacity. Member States may allow UCITS Mancos to provide additional management services to pension fund portfolios in accordance with mandates given by investors on a discretionary, client-by-client basis.

Question 9 provides guidance regarding deregistration where there are no investors in a host Member State. A UCITS wishing to de-notify the arrangements made previously for the marketing of their units will have to comply with obligations set out in Article 93 of the UCITS Directive. This ensures that there are no investors uninformed about the UCITS market exit, that all marketing is publicly terminated and that the marketing arrangements with third parties are terminated or modified to prevent any further marketing of the de-notified UCITS.

## Passporting UCITS

ESMA clarified in Question 10 whether a UCITS Manco which is authorised to pursue activities in a host Member State and intends to do so either directly or through a branch, may only passport ancillary activities such as marketing functions of the UCITS without passporting the investment management functions. The answer is no. A UCITS Manco that is intending to manage a UCITS already established in another Member State, is required to communicate its entire function to the competent authorities of its home Member State a program of operations and identify the services it intends to provide.

## How can Clerkin Lynch help

The team at Clerkin Lynch has extensive experience with the structuring, establishment and ongoing operation of UCITS in Ireland. Please contact us for a no-obligation discussion to find out more about our team and services.

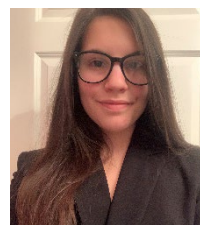


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