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Update

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New amendments to the UCITS Directive

Maria Gabriela Teixeira Duarte | gtd@servulo.com

José Eduardo Oliveira | jpo@servulo.com

The [Proposal for a Directive](#) released by the European Commission as part of the package of measures to implement the Capital Markets Union, and which introduces amendments to [Directive 2011/61/EU](#) ("**AIFM Directive**") on Alternative Investment Fund Managers ("**AIFM**"), also aims to introduce several amendments to [Directive 2009/65/EC](#), ("**UCITS Directive**") on Undertakings for Collective Investment in Transferable Securities ("**UCITS**").

The UCITS Directive is, in this context, revised as regards the human resources required in relation to UCITS Management Companies (hereinafter, "**Managers**"), the outsourcing or delegation of functions, depositary services, liquidity risk management and disclosure duties of the Managers before the supervisory authorities, in terms described below.

1. Human Resources

Similar to the changes introduced in the AIFM Directive, it is proposed that the effective management of the Managers should be carried out by persons resident in the Union who must be full-time employees or who do not have an employment relationship with the Manager but undertake to carry out the activities of the Manager on a full-time basis (Article 7(1)(a)).

The densification of the information that forms the basis of the authorisation procedure of Managers in their home Member State is also addressed. Thus, the application for authorisation is accompanied by a programme of activities setting out at least the organisational structure of the Manager, specifying the technical and human resources that will be used to conduct its business and information on the persons who effectively direct the business of the Manager, including a detailed description of their function, position and level of seniority, a description

of their reporting lines and responsibilities within and outside the Manager and an overview of the time commitment for each responsibility (Article 7(1)(c)). Furthermore, it is also required that the Manager describes in detail the human and technical resources it will use for the supervision of outsourced entities (Article 7(1)(e)).

2. Delegation

Regarding outsourcing, or "delegation of functions", the Proposal introduces changes to the UCITS Directive to clarify that delegation arrangements apply to all functions listed in Annex II of the Directive and to all permitted ancillary services (Article 13(1)).

It is further proposed to require the Managers to justify to competent authorities the delegation of their functions and to provide objective reasons for delegation (Article 13(j)), aligning the legal frameworks of the AIFM and UCITS Directive.

In this regard, it should be noted that the Manager's or the depositary's liability for outsourcing functions is not exempted, and the Manager cannot delegate functions to third parties to the extent that it becomes a letter-box entity (Article 13(2)).

It is also proposed that the competent authorities of the Member States notify ESMA annually of situations in which Managers delegate more investment management and risk management functions to entities located in third countries than it retains ("delegation notifications") (Article 13(3) and (4)).

3. Depositary

As foreseen for the AIFM Directive, it is proposed to integrate central securities depositories ("CSDs") in the custody chain, by providing for the possibility for them to be considered as delegates of the depositary when providing competing custody services. On the other hand, due diligence requirements are excluded in the outsourcing process of these entities, as they are themselves subject to supervision and have been sufficiently vetted when they obtained their authorisation (Article 22a).

4. Liquidity management tools

As regards the liquidity management of UCITS, the Proposal provides for UCITS to have liquidity management tools, with the aim that the Managers may choose at least one liquidity management tool in addition to the possibility of suspension of redemptions (Articles 18a(1) and (2) and 84). To this end, liquidity management tools will be set out in Annex IIa, added to the UCITS Directive by the Proposal. Within this framework, ESMA will prepare regulatory technical

standards to provide definitions and specify the features of the liquidity management tools listed in the Annex (Article 18a(3) to (5)).

5. Reporting obligations

The scope of the reporting obligations that the Managers must ensure for transparency purposes is also extended in the proposed revision to the UCITS Directive. Thus, it is proposed to introduce the duty for the Managers to submit reports to their home competent authorities on the markets and instruments in which they trade on behalf of the UCITS they manage (Article 20a) and the requirement to notify the competent authorities of the activation or deactivation of a liquidity management tool (Article 84(3)).

The proposed Directive is still awaiting discussion in the Council of the European Union and consideration by the European Parliament.