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// ASSET MANAGEMENT & INVESTMENT FUNDS

Regulatory Focus on Third-Party Management Companies

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On 10 September 2021, the Central Bank published new UCITS and AIFMD Q&As clarifying its resourcing expectations for new and existing so-called third party or white-label management companies (**Third-Party Mancos**). The Central Bank expects Third-Party Mancos to ensure sufficient resources are in place to allow functions be carried out to the required standards, as set down in UCITS and AIFM governing regimes and regulatory guidance for Fund Management Companies. In particular, Third-Party Mancos must take account of the impact on resources of on-boarding new business and, where this results in a *"material increase"* to the nature, scale and complexity of its business, must pro-actively engage with Central Bank supervisors to submit "*revised financial and business growth projections covering a period of two years as well as detailed assumptions for such projections, an up-to-date capital plan and current business plan with increased resourcing projections for review."*

Timely reminder of regulatory expectations

The new Q&As were preceded by Central Bank correspondence to individual Third-Party Mancos in which the Central Bank confirmed the applicability of the CP86 thematic review findings, including regulatory expectations set out therein, to Third Party Mancos. Since publication of its resourcing expectations, the Central Bank is aware that self-managed UCITS and internally managed AIFs are considering changing their status as part of the Central Bank-mandated review by all fund management companies of the adequacy of resourcing structures and is concerned that the appointment of a Third-Party Manco by such funds may result in undermining Central Bank resourcing expectations. As such, the Central Bank's letter specifically clarifies that Third-Party Mancos must take account of the CP86 thematic findings when taking on new business including the Central Bank's expectation for a proportionate increase in resources reflecting any consequential increase in the nature, scale and complexity of the Third-Party Manco's business. The clarifications set out in the Central Bank's letter to Third-Party Mancos are now reflected in the newly issued UCITS and AIFMD Q&As.

Future regulatory focus

As previously reported (here), in the context of the upcoming AIFMD review, ESMA has recommended that specific measures be included in the AIFMD and UCITS Directive to address a perceived conflict of interest with the appointment of *"fund managers that provide a platform to business partners by setting up funds at the initiative of the latter and typically delegating investment management functions to those initiators/business partners or appointing them as investment advisers or informally following their guidance/instructions".* In ESMA's view there are embedded conflicts of interest in these models which pose risks for investor protection. ESMA appears to apprehend that white-label service providers may fail to prioritise their duties to the fund if it involves challenging the sponsor and risking their own commercial interests, a concern which would perhaps be better addressed through the existing supervisory toolkit of NCAs. The industry consultation

on the AIFMD review concluded last January and a legislative proposal is expected at the end of November 2021.

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