

1. Record Nr.	UNINA9910793977903321
Autore	Hooghiemstra Sebastiaan Niels <1987->
Titolo	Depositaries in European Investment Law : towards Harmonization in Europe / / Sebastiaan Hooghiemstra
Pubbl/distr/stampa	The Hague, The Netherlands : , : Eleven International Publishing, , [2018] ©2018
ISBN	94-6274-877-2
Edizione	[1st ed.]
Descrizione fisica	1 online resource (416 pages)
Collana	Masterreeks
Disciplina	349.497
Soggetti	Consolidation and merger of corporations - Law and legislation Consolidation and merger of corporations - Law and legislation - European Union countries Investments, Foreign - Law and legislation - European Union countries
Lingua di pubblicazione	Inglese
Formato	Materiale a stampa
Livello bibliografico	Monografia
Nota di bibliografia	Includes bibliographical references.
Nota di contenuto	Intro -- Table of Contents -- List of Abbreviations -- 1 Introduction -- 1.1 Background -- 1.2 The Case for the Introduction of a Cross-Sectoral European Passport for Depositaries -- 1.2.1 Depositaries versus Custodians -- 1.2.2 Overcoming the 'European Depositary Passport Paradox' -- 1.2.3 The AIFMD/UCITSD V Depositary Passport 'Investor Protection Concerns' -- 1.2.3.1 The Concerns Raised upon Introduction of the 'Management Passport' under UCITSD IV -- 1.2.3.2 The Investor Protection Concerns upon Introducing an AIF/UCITS Depositary Passport -- 1.3 Research Questions -- 1.4 Methodology -- 1.5 Limitations -- 1.6 Scientific and Societal Relevance -- 1.6.1 Scientific Relevance -- 1.6.2 Societal Relevance: The Growing Importance of Depositaries -- 1.6.2.1 The Rise of European AuM -- 1.6.2.2 Possible Cost Reduction of a Depositary Passport -- 1.7 Study Outline -- Part I The European Depositary Passport Paradox -- 2 Locational Depositary Restrictions under the European Investment Laws -- 2.1 The European Depositary/Custodian Passport under European Investment Laws -- 2.1.1 The European Passport for 'Custodians' under MiFID II/CRD IV -- 2.1.2 The Location of the Depositary under the AIFMD and UCITSD V -- 2.1.2.1 The Location of the Depositary for

UCITS -- 2.1.2.2 The Location of the Depositary for AIFs -- 2.1.2.3 Conclusion -- 2.1.3 The Depositary Mutual Recognition Approach under IORPD II -- 2.1.3.1 'Established in another Member State' -- 2.1.3.2 Mutual Recognition under IORPD II - Applying to Depositaries and or Custodians? -- 2.1.3.3 Cooperation between Supervisory Authorities -- 2.1.3.4 Conclusion -- 2.1.4 Conclusion -- 2.2 The European Depositary Passport Debate -- 2.2.1 UCITSD I-VI -- 2.2.1.1 UCITSD I -- 2.2.1.2 UCITSD II -- 2.2.1.3 UCITSD III/IV -- 2.2.1.4 UCITSD V/VI -- 2.2.2 The AIFMD -- 2.2.3 ISD-MiFID I/II/Second Banking Directive- CRD IV.

2.2.4 IORPD I/II -- 2.2.5 Conclusion -- 2.3 Conclusion -- Part II The EEA's Approach towards the Cross-Border Provision of Financial Services 3 EEA Cross-Border Regulation for Financial Intermediaries -- 3.1 The Internal Dimension of the Cross-Border Provision of Financial Services -- 3.1.1 A Law and Economics Theory of the Internal Market for Financial Services -- 3.1.1.1 Market Efficiency and Economies of Scale and Scope -- 3.1.1.2 Risk Asymmetry and the Concept of 'Production' and 'Distribution' Member States -- 3.1.1.3 EEA Law as a Substitute for Risk Asymmetry -- 3.1.2 The Internal Dimension - The Four Freedoms -- 3.1.2.1 The Freedom of Capital -- 3.1.2.2 The Freedom of Establishment -- 3.1.2.3 The Freedom to Provide Services -- 3.1.2.4 Overlapping Fundamental Freedoms -- 3.2 The Joint Principles of the European Passport of EEA Financial Intermediaries -- 3.2.1 An Internal Market for Financial Intermediaries -- 3.2.2 The General Concept of the 'European Passport' -- 3.2.3 Positive Integration and EU Legal Instruments -- 3.2.3.1 The Choice of EU Policy Instruments -- 3.2.3.2 The Principles of Subsidiarity and Proportionality -- 3.2.3.3 The Lamfalussy Process -- 3.2.3.4 The Trend towards Maximum Harmonization -- 3.2.4 The Cornerstones of the European Passport for Financial Intermediaries: the 'Single Rulebook', 'Home Country Control' and the ESFS -- 3.2.4.1 The European Passport Substantive Legal Framework: 'The single rulebook' -- 3.2.4.2 The EEA Financial Supervisory Framework: Home Country Control and the ESFS -- 3.2.5 Conclusion -- 3.3 The External Dimension of the Cross-Border Provision of Financial Services -- 3.3.1 The External Dimension - A Law and Economics Theory -- 3.3.1.1 TC Financial Services and the EEA's External Dimension -- 3.3.1.2 Risk Asymmetry, TC Financial Centres and the Concept of 'Production' and 'Distribution' States.

3.3.1.3 Equivalency as a Substitute for Risk Asymmetry -- 3.3.2 EEA Financial Intermediaries with an External Dimension -- 3.3.2.1 'Qualifying Holding' and 'Close Links' Requirements for Non-EEA Shareholders -- 3.3.2.2 Delegation -- 3.3.2.3 Consolidated Supervision and Conglomerates -- 3.3.3 Financial Intermediaries within the EEA -- 3.3.3.1 'Stand-alone' Authorizations -- 3.3.3.2 European Passports for TC Financial Intermediaries -- 3.3.3.3 The (Mutual) Agreements Solution -- 3.3.4 EEA Financial Intermediary TC Market Access -- 3.3.4.1 The EU Commission Negotiation Mandate -- 3.3.4.2 The (Mutual) Agreements Solution under the Commission Negotiation Mandate -- 3.4 The Joint Principles of EEA TC Financial Intermediary Regulation -- 3.4.1 Third Countries and EEA Secondary Law -- 3.4.1.1 The Internal Dimension - The Four Freedoms -- 3.4.1.2 The External Dimension: International Law Commitments and EEA Secondary Law -- 3.4.2 Equivalency in EEA Secondary Law -- 3.4.2.1 Equivalency of TC Regulatory and Supervision Regimes -- 3.4.2.2 Cooperation Agreements -- 3.4.2.3 Information Exchange -- 3.4.2.4 'Legal Representation' in the EEA -- 3.4.3 The EEA's Centralized Rulemaking and Supervision -- 3.4.3.1 The Role of the European Commission in Centralized Rulemaking -- 3.4.3.2 The Role of ESAs in TC Regimes --

3.4.4 Judicial Control -- 3.5 Conclusion -- Part III Depositaries vs. Custodians -- 4 The AIFMD and UCITSD V Depositary Regulation -- 4.1 Introduction -- 4.2 The Scope of the AIFMD and UCITSD V with regard to Depositaries -- 4.2.1 The Obligation to Appoint a Depositary under the AIFMD -- 4.2.1.1 General Rule -- 4.2.1.2 The Retail-AIF Depositary -- 4.2.1.3 Exemptions from the Depositary Obligation -- 4.2.1.4 Depositary-Lite Regime -- 4.2.2 The Obligation to Appoint a Depositary under the UCITSD V.

4.3 Entities Eligible as a Depositary and Its Organizational Requirements -- 4.3.1 Entities Eligible as a Depositary under the AIFMD -- 4.3.1.1 Credit Institution -- 4.3.1.2 Investment Firm -- 4.3.1.3 Other Eligible Institutions -- 4.3.1.4 Prime Broker -- 4.3.1.5 Eligible Non-EEA Entities -- 4.3.1.6 Option for Private Equity Funds, Venture Capital Funds and Real Estate AIFs -- 4.3.2 Entities Eligible as a Depositary under UCITSD V -- 4.3.2.1 National Central Bank -- 4.3.2.2 Credit Institutions -- 4.3.2.3 Another Legal Entity -- 4.4 EEA-AIF and UCITS Depositaries - General Requirements -- 4.4.1 Duty of Loyalty -- 4.4.2 Conflicts of Interest -- 4.4.3 The Third Party Depositary Requirement -- 4.4.4 Independence Requirements under UCITSD V -- 4.4.4.1 Common Management/Supervision -- 4.4.4.2 Cross-Shareholdings/Group Inclusion -- 4.5 AIFMD Third-Country Depositaries -- 4.5.1 Additional Requirements for TC Depositaries -- 4.5.2 The Third-Country Depositary and 'Effective Prudential Regulation' -- 4.5.2.1 Effectively Enforced Prudential Regulation -- 4.5.2.2 'Supervision under Equivalent' to That Applicable under EEA Law -- 4.6 The Depositary and Its Functions -- 4.6.1 The Particulars of the Written Contract -- 4.6.1.1 Eligible Assets -- 4.6.1.2 Flow of Information -- 4.6.1.3 Escalation Procedure -- 4.6.1.4 Third Parties -- 4.6.1.5 Termination of the Contract -- 4.6.2 Safekeeping -- 4.6.2.1 Financial Instruments That Should Be Held in Custody -- 4.6.2.2 Safekeeping Duties with regard to Assets Held in Custody -- 4.6.2.3 'Other Assets' -- 4.6.2.4 Safekeeping Duties regarding Ownership Verification and Record-keeping -- 4.6.3 Control -- 4.6.3.1 Oversight Duties - General Requirements -- 4.6.3.2 Subscriptions/Redemptions -- 4.6.3.3 Valuation of Shares/Units -- 4.6.3.4 AIFM's/UCITS ManCo Instructions -- 4.6.3.5 The Timely Settlement of Transactions. 4.6.3.6 AIF's Income Distribution -- 4.6.3.7 Monitoring of the AIF's/UCITS' Cash Flows -- 4.6.3.8 UCITS Mergers and Master-Feeder Structures -- 4.7 Delegation in the Depositary Chain -- 4.7.1 Avoiding Requirements -- 4.7.2 Objective Reason -- 4.7.3 Due Diligence -- 4.7.3.1 Due Diligence upon Appointment of the Subcustodian -- 4.7.3.2 Ongoing Monitoring Diligence Sub-custodian -- 4.7.3.3 Insolvency Protection of UCITS Assets -- 4.7.4 Lex Specialis - The Prime Broker as a Sub-custodian under the AIFMD -- 4.8 The Depositary's Liability Regime under the AIFMD and UCITSD V -- 4.8.1 The Depositary's Liability under the AIFMD and UCITSD V -- 4.8.1.1 Loss of Financial Instruments That Can Be Held in Custody -- 4.8.1.2 The AIFMD and UCITSD V Liability Discharge -- 4.8.1.3 The AIFMD Contractual Discharge of Liability -- 4.8.2 The Impact of the AIFMD/UCITSD V Liability Regime for Depositaries -- 4.8.3 Rights of the AIFM/UCITS ManCo and Investors against the Depositary -- 4.8.3.1 AIFMD -- 4.8.3.2 UCITSD V -- 4.8.4 Conclusion -- 4.9 The Depositary under the 'AIFMD/UCITSD V Product Regulations' -- 4.9.1 The ELTIFR Depositary Regime -- 4.9.2 The MMFR Depositary Regime -- 4.9.3 The EuVECAR/EuSEFR 'Depositary Regime' -- 4.9.4 The AIFMD Product Regulation Depositary Regimes versus the AIFMD/UCITSD V -- 4.10 Conclusion -- 5 The IORPD II Depositary Regime -- 5.1 Introduction -- 5.2 The Appointment of Depositaries under IORPD II -- 5.2.1 The

Appointment for Full DC and Other Types of IORPs -- 5.2.1.1 Full DC IORPs -- 5.2.1.2 Other Types of IORPs -- 5.2.2 Investment Risks - Full DC, Hybrid and/or Full DB IORPs? -- 5.2.3 The Definition of a 'Depositary' under IORPD II -- 5.2.4 The Appointment of a Single Depositary versus Multiple Depositaries -- 5.2.4.1 The Inconsistency of the 'Depositary' Terminology under IORPD II.
5.2.4.2 The Unclear 'Depositary' definition under IORPD II.
