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UCITS V

On 23 July 2014 the European Union adopted Directive 2014/91/EU on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (the “**UCITS V Directive**”) amending the current Directive 2009/65/EC (the “**UCITS IV Directive**”).

The Directive setting out the UCITS V changes was published in the Official Journal of the EU on 18 August 2014 and Member States will have to implement it into national law by 18 March 2016.

The Directive provides for many of the detailed measures to be implemented through further delegated EU legislation (delegated acts, also referred to as level II measures). The EU Commission has adopted a draft Level II Regulation in December 2015.

The main changes brought forth by the UCITS V Directive will have for effect the introduction of new measures previously tested through the AIFM Directive and adapted to the particularities of UCITS. The changes concern the status of the depositaries, the remuneration of managers, new independence requirements and harmonised administrative sanctions:

- Changes relating to the depositary:

- UCITS are to appoint a unique depositary and cannot appoint multiple depositaries;
- The UCITS V Directive enunciate an exhaustive list of entities which can be appointed as depositaries;
- the duties of a depositary to keep the assets of the UCITS safe, monitor cash movements to and from the fund, and oversee the fund manager’s performance of its key functions are now harmonised;
- specific safe-keeping requirements that a depositary needs to comply with in respect of financial instruments that may be held in custody as well as for other assets, including segregation requirements for assets that are held in custody
- Member states have to ensure the protection of the asset held in custody in case of insolvency of a depositary;
- the depositary is now strictly liable for the avoidable loss of a financial instrument held in custody.

- Requirements relating to the remuneration policies:

- a requirement for UCITS management companies to have sound remuneration policies, complying with certain remuneration principles, covering their key staff and a requirement to make those policies transparent.

- Harmonisation of administrative sanctions:

- the harmonisation of the administrative sanctions that must be available to EU regulators for breaches of the UCITS Directive.

UCITS V also provides that the UCITS management company and the depositary shall act independently and solely in the interest of the UCITS and the investors of the UCITS. In this regards, ESMA published technical advices which shall be implemented as level II measures later in 2016 and which concern both cases of (a) common management or supervision and (b) cross-shareholdings between these entities.