



## UCITS V - Level 2 Implementing Measures Published

On 17 December 2015, the European Commission (“**Commission**”) published the long-awaited implementing measures under the EU directive amending the UCITS Directive (known as “**UCITS V**”), providing further detail on the rules applicable to UCITS depositaries.

The implementing measures take the form of a regulation (the “**Regulation**”) which, subject to a three month scrutiny period by the European Parliament and Council of the EU, is due to apply in all EU member states six months after its entry into force without the need for transposing legislation.

We have prepared the summary table below to provide an overview of the requirements set out in the Regulation.

Requirement	Description
Details of the written contract appointing the depositary	The Regulation sets out the contractual particulars that must be included in the depositary agreement.
Depositary functions, due diligence duties, segregation obligation and insolvency protection	<p><b>General depositary duties:</b> The Regulation provides for detailed rules relating to the depositary’s duties with regard to: oversight; subscription and redemptions; the valuation of units; the carrying out of the UCITS’ instructions; the timely settlement of transactions; income calculation and distribution; and cash monitoring.</p> <p><b>Safekeeping:</b> Further detail is provided in the Regulation in relation to the financial instruments that can be held in custody and the depositary’s safekeeping duties with respect to those assets. The Regulation also specifies requirements relating to the depositary’s safekeeping duties regarding ownership verification and record keeping in respect of assets not held in custody.</p> <p><b>Due diligence:</b> The Regulation sets out the depositary’s initial and ongoing due diligence requirements regarding the selection of sub-depositaries and the segregation of assets.</p> <p><b>Insolvency protection:</b> The Regulation requires the depositary to ensure that delegates take steps to ensure the protection of UCITS’ assets against the insolvency of the delegate and to ensure that third country laws adequately provide for segregation of the UCITS’ assets.</p>
Loss of financial instruments and liability discharge	The Regulation specifies the conditions under which a loss of a financial instrument held in custody will be deemed to occur and the conditions under which the depositary’s liability will not be triggered.
Independence requirements and provisions regarding the appointment of the depositary, conflicts of interest and the independence of management boards and supervisory functions	<p><b>Independence:</b> New requirements are introduced to ensure the operational independence of the depositary and the UCITS or UCITS management company.</p> <p><b>Appointment of depositary:</b> The Regulation introduces the requirement for a UCITS or UCITS management company to put in place a robust decision making</p>

process for choosing the depositary which must be based on objective pre-defined criteria meeting the sole interest of the UCITS and its investors. This requirement is to apply equally upon any delegation by the depositary.

**Conflicts of interest:** The UCITS / its management company and the depositary must put in place policies and procedures regarding conflicts of interest where a link (as defined in the Regulation) exists between them or where they belong to the same group.

**Independence of management boards and supervisory functions:** New provisions are set out requiring a minimum number of independent members of the management body of the management company / depositary or the body in charge of the supervisory functions within the management company / depositary, where the UCITS or its management company and the depositary belong to the same group.

## Next Steps

The Commission originally intended to publish the implementing measures at an earlier date, so that they would apply in EU member states on the same date as UCITS V, ie, 18 March 2016. Industry bodies have asked the Commission, possibly in coordination with the European Securities and Markets Authority (“**ESMA**”) and national regulators, to issue guidance as to the transitional measures to be put in place by the industry during the period between 18 March 2016 and the application date of the Regulation, which we currently anticipate to be September 2016.

As the final Regulation, as agreed upon by the three EU law-making institutions, is unlikely to depart significantly from the text now published, depositaries and UCITS should be able to proceed with updating their agreements to reflect the requirements set out in the Regulation on the basis that good faith efforts will be made to make further updates if the text of the Regulation is amended when officially published in the Official Journal of the EU.

The Regulation may be accessed [here](#).

Please get in touch with your usual Asset Management and Investment Funds Group contact or any of the contacts listed in this publication should you require further information in relation to the Regulation or any other aspect of UCITS V. You may also find it useful to access the series of briefing notes prepared by Matheson’s Asset Management Group, which deal with the key issues arising from UCITS V. These may be downloaded from our dedicated UCITS [webpage](#).

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*Full details of the Asset Management and Investment Funds Group, together with further updates, articles and briefing notes written by members of the Asset Management and Investment Funds team, can be accessed at [www.matheson.com](http://www.matheson.com).*

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