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Additional Information

Level 1 Regulation
Undertakings for Collective Investment in Transferable Securities Directive (UCITS) Directive 2009/65/EC

Topic
Disclosures

Subject Matter
Directive 2014/91/EU (UCITS V) – update of documentation

Question
When must existing UCITS depositary contracts be updated in order to meet the requirements under Directive 2014/91/EU (UCITS V)?

ESMA Answer

01-02-2016

Original language

[ESMA 34-43-392 UCITS Q&A, Section 1, 1c]

UCITS V will start to apply on 18 March 2016. Under Article 22(2) of the UCITS Directive, introduced by UCITS V, the appointment of the depositary shall be evidenced by written contract, while the delegated acts required under Article 26b will set out the particulars that need to be included in that written contract. UCITS depositary contracts should be revised promptly in accordance with any transitional arrangements outlined in the delegated acts.

UCITS V contains provisions which prescribe in law the liability of depositaries. While there is no requirement to include those liability provisions in depositary contracts, in practice existing depositary contracts will contain liability provisions which will not be consistent with the depositary liability provisions set out in UCITS V. In accordance with Article 24(4), those provisions of a contract which set out the parties' agreement on depositary liability and which conflict with the UCITS V depositary liability provisions will be void with effect from 18 March 2016. The UCITS V depositary liability provisions will apply instead. The liability provisions in existing depositary contracts should be amended to reflect the UCITS V depositary liability provisions when those depositary contracts are revised to comply with the delegated acts.