



Commission de Surveillance
du Secteur Financier

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UCITS V – PRACTICAL ISSUES IN RELATION TO THE UCITS V REGIME AND DEPOSITARY ASPECTS IN RELATION TO PART II UCIS

(I) UCITS V – applicable provisions

The substantive rules of the UCITS V regime in relation to remuneration and depositary bank aspects will enter into force in phases. The UCITS V regime will be put in place through the following instruments:

- The Luxembourg UCITS V transposition law, which is expected to be adopted and to enter into force on or close to 18 March 2016;
- The UCITS V Delegated Act with the level II measures regarding depositary bank aspects. This Delegated Act is expected to be published in the Official Journal of the European Union by the end of March 2016. It will enter into force 20 days after such publication and is expected to be applicable 6 months after the entry into force, i.e. towards the end of September/beginning of October 2016;
- The ESMA Guidelines on Sound Remuneration Policies under the UCITS Directive, which are expected to be published by the end of March 2016, and which will enter into force as of 1 January 2017;
- The ESMA Questions and Answers on the application of the UCITS Directive.

(II) UCITS V – timing of UCITS V related changes to UCITS Key Investor Information Document (KIID), UCITS prospectuses and UCITS depositary contracts and changes to UCITS remuneration policies

On 1 February 2016, ESMA published an updated version of its Questions and Answers on the application of the UCITS Directive (ref. 2016/ESMA/181).

In this document, ESMA clarifies, through three new questions and answers, the deadline for updating UCITS KIIDs, UCITS prospectuses and UCITS depositary contracts, from a documentation perspective, in view of the upcoming UCITS V regime. The CSSF will generally apply the timeline outlined in those ESMA questions and answers regarding the updating of KIIDs, UCITS prospectuses and UCITS depositary contracts in relation to all aspects under the forthcoming UCITS V.

The CSSF will put in place a fast-track procedure for the approval of changes to UCITS prospectuses which are limited to the remuneration and depositary aspects under UCITS V. UCITS can include in their prospectus a summary of the remuneration policy and a reference to a website where the details of the remuneration policy – in line with the legal framework – are available and that a paper copy will be made available free of charge upon request. Furthermore, with regards to the requirement to include a list of the delegates and sub-delegates of the UCITS depositary, UCITS can include a reference to a website where such list is available.

The CSSF will submit in the coming months to the UCITS management companies, and UCITS investment companies that have not appointed a management company, a questionnaire regarding the key aspects of the revised remuneration policies that those UCITS management or investment companies will implement in order to comply with the requirements of the UCITS V regime.

(III) UCITS V – UCITS depositary bank aspects as per Circular CSSF 14/587

Without prejudice to the clarifications under section (II) above in relation to the timing for updating UCITS prospectuses, KIIDs and depositary contracts, Circular CSSF 14/587 regarding the provisions applicable to credit institutions acting as UCITS depositary bank will, as clarified by the Circular CSSF 15/608, enter into force as of 18 March 2016. In the event of a conflict between the provisions of Circular CSSF 14/587 and the Luxembourg UCITS V transposition law mentioned under section (I) above (e.g. aspects related to the notion of “safekeeping” of assets - point 46 of the Circular), the provisions of the Luxembourg UCITS V transposition law shall prevail.

Given the fact that the above-mentioned UCITS V Delegated Act is expected to be applicable by the end of September/beginning of October 2016, the CSSF will adapt and amend Circular CSSF 14/587 with an effective date identical to the date by which the Delegated Act will be applicable, i.e. end of September/beginning of October 2016.

The purpose of revising CSSF Circular CSSF 14/587 will amongst others be to adapt the Circular to the depositary related provisions under the above-mentioned Luxembourg UCITS V transposition law and the UCITS Delegated Act. All aspects specifically covered by the Luxembourg UCITS V transposition law and/or the UCITS Delegated Act will be deleted from the revised Circular, as a result of this revision.

In the meantime, the Circular will be applicable as of 18 March 2016, and in relation to the specific requirement under point i) of Annex II of Circular CSSF 14/587, as modified by CSSF Circular CSSF 15/608 on “*the réviseur’s (auditor) report on the adequacy of the depositary’s organisation (on an annual basis)*”, such a report will first have to be produced in relation to all full financial years that start after the date of 18 March 2016, i.e. for the first time in 2017, or 2018 (for UCITS having a financial year 1 January - 31 December).

(IV) UCIs established under Part II of the Law of 17 December 2010 relating to undertakings for collective investments

Under the Luxembourg UCITS V transposition law mentioned under section (I) above, it is expected that the depositary regime applicable to UCIs established under Part II of the Law of 17 December 2010 relating to undertakings for collective investments (Part II UCIs) be aligned to the depositary regime applicable to UCITS established under Part I of that Law, in view of introducing a single depositary regime applicable to all Part II UCIs. Such depositary regime shall be applicable to all Part II UCIs and their depositary bank as of the date of entry into force of the Luxembourg UCITS V transposition law.

Upon amendment of Circular CSSF 14/587 by the end of September/beginning of October 2016, as discussed under section (III) above, the CSSF will also clarify to what extent the provisions of such Circular, as amended, are also applicable to Part II UCIs.

Luxembourg, 2 March 2016