



FINANCIAL SERVICES

UCITS V – Draft Level 2 Regulations published by the European Commission

by **Trevor Dolan**

UCITS V – Draft Level 2 Regulations published by the European Commission

6th January 2016 | by Trevor Dolan

On 17 December 2015, the European Commission published draft Level 2 Regulations under Directive 2014/91/EU (UCITS V). UCITS V amends the existing UCITS regime with respect to depositary rules, remuneration policies and sanctions.

The draft Level 2 Regulations flesh out the detail on the depositary provisions of UCITS V, including:

- the content of the written contract appointing the depositary;
- the depositary functions, including: general depositary duties; further detail on the safekeeping function; and the due diligence to be exercised in the selection of sub-custodians;
- the conditions under which a loss of financial instruments by the depositary is deemed to occur (a loss that triggers strict liability for the depositary); and
- the measures to ensure protection of a fund's assets in the event of the insolvency of sub-delegates to whom safekeeping of a fund's assets has been delegated.

An unofficial version of the draft Level 2 Regulations has been in circulation for some months, but an official version is helpful for the funds industry. It gives UCITS a firm direction on future regulation and assists in clarifying measures to be taken to ensure compliance with UCITS V before the deadline of 18 March 2016; the date by which UCITS V must be transposed into the national law of each Member State.

Under the process by which EU financial services legislation is created, known as the Lamfalussy Process, Level 1 measures such as UCITS V are supplemented by more detailed Level 2 measures like the Level 2 Regulations.

The Level 1 Directive, UCITS V, is due to be implemented into national law by 18 March 2016. It had been intended that Level 2 Regulations would be ready by this date. However, as the draft Level 2 Regulations are currently with the European Parliament and the Council of the European Union for a period of scrutiny which could last up to six months, and as Regulations usually become directly applicable in the national law of EU Member States six months after their publication in the EU's Official Journal, the Level 2 Regulations are behind schedule.

It remains to be seen how the draft Level 2 Regulations will be implemented. However, commentators suggest that either of the following approaches is the most likely:

UCITS V and the Level 2 Regulations enter into national law by 18 March 2016 without the usual six-month lead-in period applicable to Level 2 measures; or the European authorities issue guidance to assist UCITS in complying with regulatory requirements in the period after 18 March 2016, during which UCITS V has been implemented, but the Level 2 Regulations have not yet entered into national law.

We will issue further updates as matters develop.

About the Author



Trevor Dolan
Partner

Trevor advises fund promoters on structuring, establishing and listing investment funds in Ireland.

T: +353 1 637 1549 **E:** tdolan@lkshields.ie