

## Group Briefing

ESMA issues updated  
UCITS Q&A on UCITS V  
implementation

On 1 February 2016, ESMA issued an updated UCITS Q&A to address certain questions relating to the implementation of the UCITS V Directive.

**KIIDS - NO REQUIREMENT TO ISSUE A FURTHER KIID BY 18 MARCH 2016**

A UCITS is required to complete the annual update of its existing KIIDs by 19 February 2016. Separately, UCITS V requires the KIID to include an additional statement in relation to the UCITS V remuneration policy. ESMA has clarified that there is no requirement to carry out a further KIID update by 18 March 2016 to address the UCITS V requirement. A UCITS is allowed to update the KIID with the remuneration disclosure in the 2017 annual update or on the first occasion after 18 March 2016 on which the KIID is revised or replaced for another purpose (if the information is available at that point in time).

It is not clear from the Q&A whether an update to a KIID for a specific share class of a UCITS would trigger an obligation to update KIIDs for all other share classes to include the UCITS V disclosure. The Q&A could be construed as limiting the obligation to update the KIID for a specific share class and that would certainly be welcome in terms of limiting

the costs and administrative burden of doing a wholesale update to KIIDs prior to the 2017 annual update. Separately, the Central Bank has considered the question of whether UCITS may include in their February 2016 annual KIID updates a statement that the remuneration policy will be available from 18 March 2016. The Central Bank has confirmed that such a forward looking statement would not be in keeping with the prescribed format for KIIDs.

**PROSPECTUS - NO REQUIREMENT TO REVISE PROSPECTUS BY 18 MARCH 2016**

ESMA has confirmed that there is no requirement to file a revised prospectus by 18 March 2016 to include certain UCITS V remuneration-related information. As with the KIID, remuneration information does not need to be included in the prospectus until the next occasion the prospectus is revised or, in any event, by 18 March 2017 at the latest.

However, a UCITS self-managed investment company ("SMIC") or a UCITS management company should make the remuneration arrangements available on a "relevant website" as soon as practicable.

**ANNUAL REPORT - NO REQUIREMENT TO INCLUDE REMUNERATION-RELATED INFORMATION IN ANY ANNUAL REPORT RELATING TO A PERIOD THAT ENDED BEFORE 18 MARCH 2016**

UCITS V requires the UCITS annual report to include certain remuneration-related information. There is no requirement to include the information in any annual report relating to a period that ended before 18 March 2016. For annual reports relating to periods that end on or after 18 March 2016 but before the SMIC or UCITS management company has completed its first annual performance period in which it has to comply with the UCITS V remuneration rules, the remuneration requirements should include the remuneration-related information in the report on a "best efforts" basis and explain the basis for any omission.

**DEPOSITARY AGREEMENT - NO ABSOLUTE REQUIREMENT TO HAVE AN UPDATED AGREEMENT BY 18 MARCH 2016.**

ESMA notes that there is some uncertainty as to when existing UCITS depositary contracts should be updated in order to meet the requirements of UCITS V. ESMA has confirmed that the UCITS V depositary liability provisions will apply from 18 March 2016 and advises that UCITS depositary agreements should be

revised “promptly” in accordance with any transitional arrangements outlined in the Level 2 rules. However, those Level 2 rules are not yet final and the European Parliament and Council have to confirm that they have no objection to the draft rules issued by the European Commission in December 2015. It is currently anticipated that the Level 2 rules may enter into effect in September/October 2016.

UCITS V contains provisions which prescribe the liability of depositaries. ESMA notes that if, after 18 March 2016, a depositary agreement contains liability provisions inconsistent with the liability provisions under UCITS V, these provisions will be void and the UCITS V liability provisions will apply instead.

#### CONCLUSION

The guidance in the Q&A is welcome in that it may give UCITS more time to address the implementation of the different elements of UCITS V. However, the Q&A needs to be considered in the light of any local transposing regulations and guidance issued by the Central Bank, as well as the final guidance on remuneration to be issued shortly by ESMA. In addition, in light of the significant amount of work carried out over recent months by managers and depositaries in reviewing UCITS V depositary agreements and the certainty that an updated contract would give on the parties’ rights and obligations before the Level 2 rules enter into effect, many stakeholders may well consider that they should continue to work towards a deadline of 18 March 2016 to adopt a UCITS V-compliant agreement.

#### KEY CONTACTS

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