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## Financial Services Monthly Update on Regulatory Developments

### Part C – Regulation of Investment Funds (Retail)

#### Proposed UCITS V and UCITS VI Directives

The Commission published the final version of its proposed UCITS V Directive on 9 July 2012. The Commission's key proposals relate to the UCITS depositary function, remuneration and sanctions for breach of the rules. The rules relating to the depositary function are similar to the equivalent provisions in the AIFM Directive (noting that, unlike under the AIFM Directive, the depositary's liability cannot be delegated or transferred contractually). The remuneration requirements relate to the implementation of remuneration policies by UCITS managers and disclosure of total remuneration amounts, and are intended to be consistent with the equivalent provisions of the AIFM Directive.

Separately, the Commission has published a consultation paper on further changes to the UCITS regime (UCITS VI). The topics which the Commission is consulting on include eligible assets and use of derivatives, efficient portfolio management (EPM) techniques, the use of OTC derivatives, extraordinary liquidity management tools, passporting rights for UCITS depositaries and money market funds.

*Timings:* The FSA intends to publish a consultation paper on UCITS V by the end of 2012. The Commission has indicated that UCITS V will apply by the end of 2014. The Commission may adopt its legislative proposal for UCITS VI by the end of the first quarter of 2013.

#### Proposed EU Regulation of Packaged Retail investment Products

The Commission published a proposal for a Regulation on key information documents for packaged retail investment products (PRIPs) in July 2012. PRIPs include different types of investment products which are marketed to retail investors, including insurance based products and structured term deposits. There is currently no consistent regulation for pre-contractual product disclosures for these products.

The Commission has proposed a new disclosure instrument to regulate pre-contractual disclosures of PRIPs. This new disclosure instrument requires pre-contractual disclosure for all PRIPs sold in the retail market, applying the same principles in the UCITS Directive's KIID. The Commission is also proposing rules on sales practices by extending the application of the MiFID sales rules to PRIPs which are not currently covered.

*Timing:* The proposal will be considered by the European Parliament and the Council of the EU in 2013. The Regulation is not likely to apply before mid 2015.

#### FSA's Retail Distribution Review

The FSA's Retail Distribution Review (RDR) will come into effect on 31 December 2012.

The FSA has adopted changes to the COBS sourcebook relating to the distribution of investment and

personal pension products to retail investors in the UK. The most significant reform introduced by the RDR is the ban on commission paid by product providers to advisers in exchange for distributing their financial products. Post RDR, retail financial advisers will need to put in place a charging structure which is agreed to by the retail client. The FSA has provided guidance on “facilitation” structures. In broad terms, it should be permissible for an adviser to obtain its fee by deduction from the amount the client subscribes into the product, but it will not be possible for advisers to fund their fees from cash rebates of management fee paid by the manager to the client.

*Timing and recommended actions:* These rules apply to any investment manager or fund paying commission to FSA authorised advisers of UK retail clients, and come into effect on 31 December 2012. Many firms have created “RDR ready” share classes, which typically carry a management fee at half the rate of the existing management fee. Firms should check the terms of their distribution agreements with retail financial advisers to ensure adviser’s compliance with the RDR.

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