

14 January 2019

**Securities and Markets  
Supervision Unit**

Unit Tel: (+356) 21441155

**Re: Circular to Collective Investment Schemes, Alternative Investment Funds Managers, UCITS Management Companies and Depositories of Collective Investment Schemes relating to Commission Delegated Regulations on safe-keeping duties of depositories.**

The industry is hereby being informed that the [Commission Delegated Regulation 2018/1618 amending Delegated Regulation 231/2013](#) (Level II law of AIFMD)<sup>1</sup> and the [Commission Delegated Regulation 2018/1619 amending Delegated Regulation \(EU\) 2016/438](#) (Level II law of UCITS V)<sup>2</sup> hereafter “Commission Delegated Regulations”) were published on 30 October 2018. Both Commission Delegated Regulations set out rules on the safe-keeping duties of depositories. They aim at ensuring strong client protection by *inter alia* minimising the risk of loss of assets held in omnibus financial instruments accounts provided by third parties, to whom the custody function has been delegated.

The changes introduced by the Commission Delegated Regulations include, *inter alia*:

- Changes to asset segregation rules, including the prohibition for the depository’s own assets to be co-mingled with UCITS and/or AIF assets held in omnibus accounts;
- Considerations that need to be taken into account in determining the frequency of reconciliations of accounts and records of the depositories with those of third parties; and
- A requirement to seek independent legal advice confirming that the applicable insolvency law in the host Member State where the third party is located, including an evaluation of the level of protection afforded by segregated financial instruments accounts in that jurisdiction.

The above changes are not an exhaustive list and the industry is required to carefully review the Commission Delegated Regulations and take the required actions in a timely manner.

The new requirements contained in both Regulations shall apply from **1 April 2020**.

**Contacts**

Any queries in relation to this Circular are to be addressed to MFSA Securities and Market Supervision Unit at: [funds@mfsa.com.mt](mailto:funds@mfsa.com.mt).

**Joseph J. Agius**  
**Deputy Head**  
**Securities & Markets Supervision Unit**

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<sup>1</sup> Level II law of AIFMD - [https://eur-lex.europa.eu/eli/reg\\_del/2018/1618/oj](https://eur-lex.europa.eu/eli/reg_del/2018/1618/oj)

<sup>2</sup> Level II law of UCITS V - [https://eur-lex.europa.eu/eli/reg\\_del/2018/1619/oj](https://eur-lex.europa.eu/eli/reg_del/2018/1619/oj)