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Clarification of the scope of the UCITS and AIFMD depositary regimes

A significant number of so-called Part II UCIs may remain within the scope of the AIFMD depositary regime. Luxembourg's Parliament (*Chambre des Députés*) has voted yesterday to amend the respective legislation to this effect. This amendment clarifies the scope of the UCITS-like and the AIFMD depositary regimes in Luxembourg for these funds.

In general, all Part II UCIs should fall within the scope of the AIFMD depositary regime upon entry into force of the voted amendments, provided they adapt their marketing strategy. The extent of the application of the AIFMD depositary regime will depend on whether or not the alternative investment fund manager of such Part II UCI is considered to be a sub-threshold alternative investment fund manager or whether the alternative investment fund manager is located in a third country. Only Part II UCIs which are distributed to retail investors in Luxembourg will fall within the scope of the more stringent UCITS-like depositary regime. To ensure that a Part II UCI falls within the scope of the AIFMD depositary regime, these funds are required to include in their sales documentation information stating that they are prohibiting the marketing of shares of the fund to retail investors in Luxembourg.

The amendments voted yesterday clarify the confusion created in 2016 when changes were introduced to the depositary regime for Part II UCIs following the implementation of the UCITS V Directive. The changes made at that time caused uncertainty as to which Part II UCIs will remain within the scope of the AIFMD depositary regime and which will be subject to the UCITS-like depositary regime. Provided that the Council of State (*Conseil d'Etat*) refrains from its second vote, the amendments voted yesterday may be published in the *Mémorial*, the Luxembourg official journal, and will enter into force on the fourth day following its publication.

We remain at your disposal for any further questions.

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- [Luxembourg implements the UCITS V Directive](#)
(dated 21 April 2016)

- [The majority of Luxembourg Part II UCIs to remain within the AIFMD depositary regime](#)
(dated 1 August 2016)

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