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COVER NOTE

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	14 July 2016
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

No. Cion doc.:	C(2016) 4407 final
Subject:	COMMISSION DELEGATED REGULATION (EU) .../... of 14.7.2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards concerning the information for registration of third country firms and the format of information to be provided to the clients

Delegations will find attached document C(2016) 4407 final.

Encl.: C(2016) 4407 final



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COMMISSION DELEGATED REGULATION (EU) .../...

of 14.7.2016

supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards concerning the information for registration of third country firms and the format of information to be provided to the clients

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

The Markets in Financial Instruments Regulation (Regulation (EU) No 600/2014) offers the option to third-country firms to provide investment services or perform investment activities throughout the Union under certain conditions, one of which is to be registered with the European Securities and Markets Authority (ESMA) and to provide certain information items to EU clients. Article 46(7) empowers ESMA to develop regulatory technical standards to specify the information that the applicant third country firms shall provide to ESMA in its application for registration and the format of information to be provided to EU clients.

In accordance with Articles 10 to 15 of Regulation No (EU) 1095/2010 establishing ESMA, the Commission shall decide within three months of receipt of the draft standards whether to endorse them. The Commission may also endorse the draft standards in part only, or with amendments, where the Union's interests so require, having regard to the specific procedure laid down in those Articles.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

ESMA has carried out a public consultation on the draft Technical Standards in accordance with the third subparagraph of Article 10(1) of Regulation (EU) No 1095/2010. In addition to this ESMA sought the views of the Securities and Markets Stakeholder Group (SMSG) set up in accordance with Article 37 of Regulation (EU) No 1095/2010. The SMSG chose not to provide advice on these issues due to the technical nature of the standards.

The ESMA final report sets out the feedback statement to the Consultation Paper which provides an analysis of responses to the consultation, describes any material changes (or confirms that there have been no material changes), and explains the reasons for this in the light of feedback received.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

ESMA is empowered to develop these regulatory technical standards to specify the information that the applicant third country shall provide to ESMA in its application for registration and the format of information to be provided to clients.

The list of information covers very basic information (such as name of firm, contact details, identification codes and information on its authorisation status) that applicant third-country firms will be able to provide to ESMA without any significant impact in terms of costs. Moreover, any compliance costs that third-country firms might incur will be clearly outweighed by the benefits related to the possibility to provide investment services with or without any ancillary services to eligible counterparties and to professional clients per se in the Union.

Articles 1 to 3 set out the information for registration of third country firms and the format in which the information should be provided to clients.

Article 4 provides that the Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal.

COMMISSION DELEGATED REGULATION (EU) .../...

of 14.7.2016

supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards concerning the information for registration of third country firms and the format of information to be provided to the clients

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012¹, and in particular Article 46(7) thereof,

Whereas:

- (1) Regulation (EU) No 600/2014 sets out a harmonised framework for the treatment of third-country firms accessing the Union to provide investment services and activities to eligible counterparties and to professional clients.
- (2) It is appropriate to set out the information that a third country firm applying for the provision of investment services or performance of activities throughout the Union should provide to the European Securities and Markets Authority (ESMA) and the format in which the information to clients as referred to in Article 46(5) of Regulation (EU) No 600/2014 should be provided in order to establish uniform requirements relating to third country firms and to benefit from the possibility to provide services throughout the Union.
- (3) In order to enable ESMA to correctly identify and register the third country firms, ESMA should be provided with their contact details, their national and international identification codes and proof of their authorisation to provide investment services in the country where the firm is established.
- (4) Attention should be paid to the language and layout used to provide information to clients by third-country firms, in order to ensure that the information is understandable and clear.

¹ OJ L 173, 12.6.2014, p. 84.

- (5) The application of this Regulation should be deferred in order to be aligned with the date of application of Regulation (EU) No 600/2014.
- (6) This Regulation is based on the draft regulatory technical standards submitted by ESMA to the Commission.
- (7) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council²,

HAS ADOPTED THIS REGULATION:

Article 1
Information necessary for the registration

A third country firm applying for the provision of investment services or performance of activities throughout the Union in accordance with the second subparagraph of Article 46(4) of Regulation (EU) No 600/2014 shall submit the following information to ESMA:

- (a) full name of the firm, including its legal name and any other trading name to be used by the firm;
- (b) contact details of the firm, including the head office address, telephone number and email address;
- (c) contact details of the person in charge of the application, including telephone number and email address;
- (d) website, where available;
- (e) national identification number of the firm, where available;
- (f) legal entity identifier (LEI) of the firm, where available;
- (g) Business Identifier Code (BIC) of the firm, where available;
- (h) name and address of the competent authority of the third country that is responsible for the supervision of the firm; where more than one authority is responsible for supervision, the details of the respective areas of competence shall be provided;
- (i) the link to the register of each competent authority of the third country, where available;

² Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

- (j) information on which investment services, activities, and ancillary services it is authorised to provide in the country where the firm is established;
- (k) the investment services to be provided and activities to be performed in the Union, together with any ancillary services.

Article 2

Information submission requirements

1. The third country firm shall inform ESMA, within 30 days, of any change of the information provided under Article 1(a) to (g), (j) and (k).
2. Information provided to ESMA under Article 1(j) shall be provided through a written declaration issued by a competent authority of the third country.
3. The information provided to ESMA under Article 1 shall be in English, using the Latin alphabet. Any accompanying documents provided to ESMA under Article 1 and in paragraph 2 of this Article shall be in English or, where they have been written in a different language, a certified English translation shall also be provided.

Article 3

Information concerning type of clients in the Union

1. A third-country firm shall provide the information referred to in Article 46(5) of Regulation (EU) No 600/2014 to the clients in a durable medium.
2. The information referred to in Article 46(5) of Regulation (EU) No 600/2014, shall be:
 - (a) provided in English or in the official language, or one of the official languages, of the Member State where the services are to be provided
 - (b) presented and laid out in a way that is easy to read, using characters of readable size;
 - (c) without using colours that may diminish the comprehensibility of the information.

Article 4

Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall apply from the date referred to in the second paragraph of Article 55 of Regulation (EU) No 600/2014.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 14.7.2016

*For the Commission
The President
Jean-Claude JUNCKER*