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COVER NOTE

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

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Subject:	COMMISSION DELEGATED REGULATION (EU) .../... of 11.11.2016 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council with regard to regulatory technical standards further specifying the content of the reporting on internalised settlements

Delegations will find attached document C(2016) 7147 final/2 of 2.2.2017.

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Brussels, 11.11.2016
C(2016) 7147 final/2 of 2.2.2017

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

of 11.11.2016

supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council with regard to regulatory technical standards further specifying the content of the reporting on internalised settlements

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Regulation (EU) No 909/2014 ('the Regulation')¹ requires that institutions performing securities settlement other than through securities settlement systems operated by central securities depositories (the 'settlement internalisers') report to the competent authorities of their place of establishment, the aggregated volume and values of all securities transactions that they settle in such way. Moreover, the Regulation empowers the Commission to adopt, following submission of draft regulatory technical standards by the European Securities and Markets Authority ('ESMA'), and in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010² establishing ESMA, a delegated Regulation specifying further the content of the reporting by settlement internalisers under Article 9(1) of the Regulation.

In accordance with Article 10(1) of Regulation (EU) No 1095/2010, the Commission shall decide within three months of receipt of the draft standards whether to endorse the drafts submitted. 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 that Article.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

In accordance with the third subparagraph of Article 10(1) of Regulation (EU) No 1095/2010, ESMA carried out a public consultation: first on the initial Discussion Paper with the proposed policy options (during March-April 2014) and then on the draft regulatory technical standards submitted to the Commission in accordance with Article 9(2) of the Regulation. A Consultation Paper containing draft regulatory technical standards was published on 18 December 2014 on the ESMA internet site and the consultation closed on 19 February 2015.

Moreover, ESMA's Securities and Markets Stakeholder Group set up in accordance with Article 37 of Regulation (EU) No 1095/2010 was consulted on the draft technical standards.

Additionally, ESMA involved the members of the European System of Central Banks (the ESCB) in the development of the draft regulatory technical standards as required under Article 9(2) of the Regulation.

Together with the draft regulatory technical standards under Article 9(2) of the Regulation, ESMA submitted a report on how the outcome of these consultations has been taken into account in the development of the final draft regulatory technical standards submitted to the Commission.

¹ Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directive 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014, p. 1).

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).

Together with the draft regulatory technical standards, and in accordance with the third subparagraph of Article 10(1) of Regulation (EU) No 1095/2010, ESMA has also submitted the impact assessment. This includes an analysis of the costs and benefits related to the draft regulatory technical standard submitted to the Commission under Article 9(2) of the Regulation. This analysis is available in Section 3 of Annex III to the ESMA's Final Report on draft technical standards under Regulation (EU) No 909/2014. (see: [http://www.esma.europa.eu/system/files/2015-esma-1457 - annex iii - cba csdr ts on csd requirements and internalised settlement.pdf](http://www.esma.europa.eu/system/files/2015-esma-1457_-_annex_iii_-_cba_csd_rts_on_csd_requirements_and_internalised_settlement.pdf)).

3. LEGAL ELEMENTS OF THE DELEGATED ACT

Article 9(2) of the Regulation provides that ESMA may develop draft regulatory technical standards further specifying the content of the reporting by settlement internalisers. The power to adopt a delegated regulation is provided in the second subparagraph of Article 9(2) of the Regulation.

The delegated act specifies the data to be reported by settlement internalisers to the competent authorities. In particular, it sets out the standards for the reporting of the aggregate volume and value of all securities transactions settled outside securities settlement systems operated by CSDs. This approach is justified by the results of the impact assessment described in Section 3 of Annex III to the ESMA's Final Report on draft technical standards under Regulation (EU) No 909/2014, which show that further specifying the content of the reporting by settlement internalisers is beneficial for competent authorities to gain a better understanding of the risks posed by internalised settlement, while the costs borne by settlement internalisers from such reporting are not significantly higher than in case where no such further specification was provided in a delegated act.

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

of 11.11.2016

supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council with regard to regulatory technical standards further specifying the content of the reporting on internalised settlements

(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 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012³, and in particular the second subparagraph of Article 9(2) thereof,

Whereas:

- (1) The European Securities and Markets Authority (ESMA) has considered the ‘Report on the outcome of the Committee of European Banking Supervisors call for evidence on custodian banks’ internalisation of settlement and Central Counterparties-like activities’ of 17 April 2009, which showcases considerable differences regarding the rules and monitoring procedures at the level of settlement internalisers across Member States, as well as regarding the understanding of the concept of internalised settlement.
- (2) In accordance with Regulation (EU) No 909/2014, settlement internalisers are to report on settlements that they internalise. In order to provide a good overview of the scope and of the extent of internalised settlements it is necessary to specify further the content of such reporting. The reports on internalised settlement should provide detailed information on the aggregated volume and value of settlement instructions settled by settlement internalisers outside securities settlement systems specifying asset class, type of securities transactions, type of clients, and issuer Central Securities Depository (CSD).

A settlement internaliser should only report internalised settlements where it has executed a settlement instruction by a client of the settlement internaliser in its own books. A settlement internaliser should not report subsequent alignments of book-entry positions to reflect the settlement of instructions by other entities in the holding chain of securities, as these do not qualify as internalised settlement. Similarly, a settlement internaliser should not report transactions executed on a trading venue and

³ OJ L 257, 28.8.2014, p. 1.

transferred by the trading venue to a central counterparty (CCP) for clearing or to a CSD for settlement.

- (3) In order to facilitate data comparability across settlement internalisers, calculations related to the value of internalised settlement instructions under this Regulation should be based on objective and reliable data and methodologies.
- (4) The reporting requirements set out in this Regulation may require significant IT system changes, market testing and adjustments to legal arrangements of the institutions concerned. It is therefore necessary to give those institutions sufficient time to prepare for the application of those requirements.
- (5) This Regulation is based on the draft regulatory technical standards submitted by ESMA to the Commission.
- (6) 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 10 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council⁴.
- (7) In accordance with Article 9(2) of Regulation (EU) No 909/2014, in developing the draft regulatory technical standards on which this Regulation is based, ESMA has worked in close cooperation with the members of the European System of Central Banks,

HAS ADOPTED THIS REGULATION:

Article 1

For the purposes of this Regulation the following definitions apply:

'internalised settlement instruction' means an instruction by a client of the settlement internaliser to place at the disposal of the recipient an amount of money or to transfer the title to, or interest in, a security or securities by means of a book entry on a register, or otherwise, which is settled by the settlement internaliser in its own books and not through a securities settlement system.

'failed internalised settlement instruction' means non-occurrence of settlement, or partial settlement, of a securities transaction at the date agreed by the parties concerned due to a lack of securities or cash, regardless of the underlying cause.

⁴ Regulation (EU) No 1095/2010 of 24 November 2010 of the European Parliament and of the Council 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).

Article 2

1. The reports referred to in the first subparagraph of Article 9(1) of Regulation (EU) No 909/2014 shall include the following information:
 - (a) country code of the place of establishment of the settlement internaliser;
 - (b) reporting timestamp;
 - (c) period covered by the report;
 - (d) identifier of the settlement internaliser;
 - (e) contact details of the settlement internaliser;
 - (f) the aggregated volume and value, expressed in euros, of internalised settlement instructions settled by the settlement internaliser during the period covered by the report;
 - (g) the aggregated volume and value, expressed in euros, of internalised settlement instructions settled by the settlement internaliser during the period covered by the report, for each of the following types of financial instruments:
 - (i) transferable securities referred to in point (a) of Article 4(1)(44) of Directive 2014/65/EU of the European Parliament and of the Council⁵;
 - (ii) sovereign debt referred to in point (61) of Article 4(1) of Directive 2014/65/EU;
 - (iii) transferable securities referred to in point (b) of Article 4(1)(44) of Directive 2014/65/EU, other than those referred to in point (ii) of point (g) of this subparagraph;
 - (iv) transferable securities referred to in point (c) of Article 4(1)(44) of Directive 2014/65/EU;
 - (v) exchange-traded funds as defined in point (46) of Article 4(1) of Directive 2014/65/EU;
 - (vi) units in collective investment undertakings, other than exchange-traded funds ;
 - (vii) money-market instruments, other than those referred to in point (ii);
 - (viii) emission allowances;
 - (ix) other financial instruments.

⁵ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

- (h) the aggregated volume and value, expressed in euros, of all internalised settlement instructions, for each of the following types of securities transactions settled by the settlement internaliser during the period covered by the report:
 - (i) purchase or sale of securities;
 - (ii) collateral management operations;
 - (iii) securities lending or securities borrowing;
 - (iv) repurchase transactions;
 - (v) other securities transactions.
- (i) the aggregated volume and value, expressed in euros, of all internalised settlement instructions, settled by the settlement internaliser during the period covered by the report, covering the following types of clients:
 - (i) professional clients as defined in point (10) of Article 4(1) of Directive 2014/65/EU;
 - (ii) retail clients as defined in point (11) of Article 4(1) of Directive 2014/65/EU.
- (j) the aggregated volume and value, expressed in euros, of all internalised settlement instructions referring to cash transfers settled by the settlement internaliser during the period covered by the report;
- (k) the aggregated volume and value, expressed in euros, of all internalised settlement instructions settled by the settlement internaliser during the period covered by the report, per each CSD that provides the core service referred to in point 1 or 2 of Section A of the Annex to Regulation (EU) No 909/2014 in relation to the underlying securities;
- (l) the aggregated volume and value, expressed in euros, of all internalised settlement instructions referred to in points (g) to (j), per each CSD that provides the core service referred to in point 1 or 2 of Section A of the Annex to Regulation (EU) No 909/2014 in relation to the underlying securities;
- (m) the aggregated volume and value, expressed in euros, of failed internalised settlement instructions referred to in points (f) to (l) that fail to be settled as during the period covered by the report;
- (n) the rates of internalised settlement instructions referred to in points (f) to (l) that fail to be settled as compared to the following:
 - (i) the aggregated value, expressed in euros, of internalised settlement instructions settled by the settlement internaliser and failed internalised settlement instructions;
 - (ii) the aggregated volume of internalised settlement instructions settled by the settlement internaliser and failed internalised settlement instructions.

For the purposes of points (k) and (l) of the first subparagraph, if the information on the CSD that provides the core service referred to in point 1 or 2 of Section A of the Annex to Regulation (EU) No 909/2014 in relation to the underlying securities issue is not available, the ISIN of the securities shall be used as a proxy, by splitting the data by the first two characters of the ISIN codes.

2. Where available, the exchange rate of the European Central Bank on the last day of the period covered by the reports shall be used for the conversion of other currencies into euros.
3. The aggregated value of internalised settlement instructions referred to in paragraph 1 shall be calculated as follows:
 - (a) in the case of internalised settlement instructions against payment, the settlement amount of the cash leg;
 - (b) in the case of internalised settlement instructions free of payment, the market value of the securities or, if not available, the nominal value of the securities.

The market value referred to in point (b) of the first subparagraph shall be calculated as follows:

- (a) for financial instruments referred to in Article 3(1) of Regulation (EU) No 600/2014 of the European Parliament and of the Council⁶ admitted to trading on a trading venue within the Union, the value determined on the basis of the closing price of the most relevant market in terms of liquidity referred to in Article 4(6)(b) of that Regulation;
- (b) for financial instruments admitted to trading on a trading venue within the Union other than those referred to in point (a), the value determined on the basis of the closing price of the trading venue within the Union with the highest turnover;
- (c) for financial instruments other than those referred to in points (a) and (b) the value determined on the basis of a price calculated using a pre-determined methodology, approved by the competent authority, that refers to criteria related to market data, such as market prices available across trading venues or investment firms.

Article 3

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

⁶ 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 648/2012 (OJ L 173, 12.6.2014, p. 84).

It shall apply from ... *[insert date - the date of entry into force referred to in Article 2 of the implementing act based on Article 9(3) of Regulation (EU) No. 909/2014]*.

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

Done at Brussels, 11.11.2016

*For the Commission
The President
Jean-Claude Juncker*