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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
No. Cion doc.:	C(2017) 1872 final
Subject:	CORRIGENDUM of 17.3.2017 to Commission Delegated Regulation of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive C(2016) 2398 final

Delegations will find attached document C(2017) 1872 final.

Encl.: C(2017) 1872 final



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CORRIGENDUM

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to Commission Delegated Regulation of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive

C(2016) 2398 final

CORRIGENDUM

to Commission Delegated Regulation of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive

C(2016) 2398 final

Recital (117):

for: ‘To ensure the necessary level of convergence, it is appropriate to specify a list of circumstances constituting significant damage to investors’ interests and the orderly functioning of the market which could be the basis of a decision by a national competent authority, an investment firm or a market operator operating an MTF or an OTF not to demand the suspension or removal of a financial instrument from trading, or not to follow a notification thereto. It is appropriate for such a list to be non-exhaustive as it will thus provide national competent authorities with a framework for the exercise of their judgement and will leave them a necessary degree of flexibility in the assessment of individual cases.’

read: ‘To ensure the necessary level of convergence, it is appropriate to specify a list of circumstances constituting significant damage to investors’ interests and the orderly functioning of the market which could be the basis of a decision by a national competent authority, a market operator operating a regulated market or an investment firm or a market operator operating an MTF or an OTF not to demand the suspension or removal of a financial instrument from trading, or not to follow a notification thereto. It is appropriate for such a list to be non-exhaustive as it will thus provide national competent authorities with a framework for the exercise of their judgement and will leave them a necessary degree of flexibility in the assessment of individual cases.’.

In Article 2:

- for:*
- ‘3. ‘outsourcing’ means an arrangement of any form between an investment firm and a service provider by which that service provider performs a process, a service or an activity which would otherwise be undertaken by the investment firm itself;
 - (a) ‘person with whom a relevant person has a family relationship’ means any of the following:

- (b) the spouse of the relevant person or any partner of that person considered by national law as equivalent to a spouse;
- (c) a dependent child or stepchild of the relevant person;
- (d) any other relative of the relevant person who has shared the same household as that person for at least one year on the date of the personal transaction concerned;'

read: '3. 'outsourcing' means an arrangement of any form between an investment firm and a service provider by which that service provider performs a process, a service or an activity which would otherwise be undertaken by the investment firm itself;

3a. 'person with whom a relevant person has a family relationship' means any of the following:

- (a) the spouse of the relevant person or any partner of that person considered by national law as equivalent to a spouse;
- (b) a dependent child or stepchild of the relevant person;
- (c) any other relative of the relevant person who has shared the same household as that person for at least one year on the date of the personal transaction concerned;'

In Article 5(7):

for: '(c) other methods of bringing about the transfer of rights of an ownership nature in relation to the relevant quantity of goods without physically delivering them including notification, scheduling or nomination to the operator of an energy supply network, _that entitles the recipient to the relevant quantity of the goods.'

read: '(c) other methods of bringing about the transfer of rights of an ownership nature in relation to the relevant quantity of goods without physically delivering them, including notification, scheduling or nomination to the operator of an energy supply network, that entitles the recipient to the relevant quantity of the goods.'

In Article 8, in point (d):

for: 'except if the contract is already within the scope of Section C(4) of Annex I to Directive [2014/65/EU](#);

read: ‘except where the contract is already within the scope of Section (C) of Annex I to Directive 2014/65/EU;’.

In Article 12, in point (a):

for: ‘on a frequent and systematic basis in the financial instrument for which there is a liquid market in accordance with Article 2(1)(17)(b) of Regulation (EU) No 600/2014 where during the past 6 months:’

read: ‘on a frequent and systematic basis in the financial instrument for which there is a liquid market as defined in Article 2(1)(17)(b) of Regulation (EU) No 600/2014 where during the past 6 months:’.

Article 12(b):

for: ‘(b) on a frequent and systematic basis in the financial instrument for which there is not a liquid market in accordance with Article 2(1)(17)(b) of Regulation (EU) No 600/2014 where during the past 6 months the OTC transactions carried out by it on own account when executing client orders takes place on average on a daily basis;’

read: ‘(b) on a frequent and systematic basis in the financial instrument for which there is not a liquid market as defined in Article 2(1)(17)(b) of Regulation (EU) No 600/2014 where during the past 6 months the OTC transactions carried out by it on own account when executing client orders takes place on average on a daily basis;’.

In Article 12, in point (c):

for: ‘on a substantial basis in the financial instrument where the number of OTC trades carried out by it on own account when executing client orders is, during the past 6 months, equal to or larger than either:’

read: ‘on a substantial basis in the financial instrument where the size of OTC trading carried out by it on own account when executing client orders is, during the past 6 months, equal to or larger than either:’.

In Article 13, in point (a):

for: ‘on a frequent and systematic basis in a bond for which there is a liquid market in accordance with Article 2(1)(17)(b) of Regulation (EU) No 600/2014 where during the past 6 months:’

read: ‘on a frequent and systematic basis in a bond for which there is a liquid market as defined in Article 2(1)(17)(a) of Regulation (EU) No 600/2014 where during the past 6 months:’.

Article 13(b):

for: ‘on a frequent and systematic basis in a bond for which there is not a liquid market in accordance with Article 2(1)(17)(b) of Regulation (EU) No 600/2014 where during the past 6 months the OTC transactions carried out by it on own account when executing client orders takes place on average once a week;’

read: ‘on a frequent and systematic basis in a bond for which there is not a liquid market as defined in Article 2(1)(17)(a) of Regulation (EU) No 600/2014 where during the past 6 months the OTC transactions carried out by it on own account when executing client orders take place on average once a week;’.

Article 13(c):

for: ‘(c) on a substantial basis in a bond where the number of OTC trades carried out by it on own account when executing client orders is, during the past 6 months, equal to or larger than either:

- (i) 25% of the total nominal amount traded in that bond executed by the investment firm on own account or on behalf of clients and executed on a trading venue or OTC;
- (ii) 1% of the total nominal amount traded in that bond executed in the Union on a trading venue or OTC.’

read: ‘(c) on a substantial basis in a bond where the size of OTC trading carried out by it on own account when executing client orders is, during the past 6 months, equal to or larger than any of the following:

- (i) 25% of the total turnover in that bond executed by the investment firm on own account or on behalf of clients and executed on a trading venue or OTC;

- (ii) 1% of the total turnover in that bond executed in the Union on a trading venue or OTC.’.

In Article 14, in point (a):

for: ‘on a frequent and systematic basis in a structured finance product for which there is a liquid market in accordance with Article 2(1)(17)(b) of Regulation (EU) No 600/2014 where during the past 6 months:’

read: ‘on a frequent and systematic basis in a structured finance product for which there is a liquid market as defined in Article 2(1)(17)(a) of Regulation (EU) No 600/2014 where during the past 6 months:’.

In Article 14:

for: ‘(b) on a frequent and systematic basis in a structured finance product for which there is not a liquid market in accordance with Article 2(1)(17)(b) of Regulation (EU) No 600/2014 where during the past 6 months the OTC transactions carried out by it on own account when executing client orders takes place on average once a week;’

read: ‘(b) on a frequent and systematic basis in a structured finance product for which there is not a liquid market as defined in Article 2(1)(17)(a) of Regulation (EU) No 600/2014 where during the past 6 months the OTC transactions carried out by it on own account when executing client orders take place on average once a week;’.

Article 14(c):

for: ‘(c) on a substantial basis in a structured finance product where the number of OTC trades carried out by it on own account when executing client orders is, during the past 6 months, equal to or larger than either:

- (i) 30% of the total nominal amount traded in that structured finance product executed by the investment firm on own account or on behalf of clients and executed on a trading venue or OTC; or
- (ii) 2.25% of the total nominal amount traded in that structured finance product executed in the Union on a trading venue or OTC.’

read: ‘(c) on a substantial basis in a structured finance product where the size of OTC trading carried out by it on own account when executing client orders is, during the past 6 months, equal to or larger than any of the following:

- (i) 30% of the total turnover in that structured finance product executed by the investment firm on own account or on behalf of clients and executed on a trading venue or OTC;
- (ii) 2.25% of the total turnover in that structured finance product executed in the Union on a trading venue or OTC.’

In Article 15, in point (a):

for: ‘on a frequent and systematic basis in a derivative for which there is a liquid market in accordance with Article 2(1)(17)(b) of Regulation (EU) No 600/2014 where during the past 6 months:’

read: ‘on a frequent and systematic basis in a derivative for which there is a liquid market as defined in Article 2(1)(17)(a) of Regulation (EU) No 600/2014 where during the past 6 months:’.

Article 15(b):

for: ‘(b) on a frequent and systematic basis in a derivative for which there is not a liquid market in accordance with Article 2(1)(17)(b) of Regulation (EU) No 600/2014 where during the past 6 months the OTC transactions carried out by it on own account in the relevant class of derivatives when executing client orders takes place on average once a week;’

read: (b) on a frequent and systematic basis in a derivative for which there is not a liquid market as defined in Article 2(1)(17)(a) of Regulation (EU) No 600/2014 where during the past 6 months the OTC transactions carried out by it on own account in the relevant class of derivative when executing client orders take place on average once a week;’.

Article 15(c):

for: ‘(c) on a substantial basis in a derivative where the number of OTC trades carried out by it on own account when executing client orders is, during the past 6 months, equal to or larger than either:

(i) 25% of the total nominal amount traded in that class of derivatives executed by the investment firm on own account or on behalf of clients and executed on a trading venue or OTC; or

(ii) 1% of the total nominal amount traded in that class of derivatives executed in the Union on a trading venue or OTC.’

read: ‘(c) on a substantial basis in a derivative where the size of OTC trading carried out by it on own account when executing client orders is, during the past 6 months, equal to or larger than any of the following:

(i) 25% of the total turnover in that class of derivative executed by the investment firm on own account or on behalf of clients and executed on a trading venue or OTC;

(ii) 1% of the total turnover in that class of derivative executed in the Union on a trading venue or OTC.’

In Article 16, in point (a):

for: ‘on a frequent and systematic basis in an emission allowance for which there is a liquid market in accordance with Article 2(1)(17)(b) of Regulation (EU) No 600/2014 where during the past 6 months:’

read: ‘on a frequent and systematic basis in an emission allowance for which there is a liquid market as defined in Article 2(1)(17)(a) of Regulation (EU) No 600/2014 where during the past 6 months:’.

Article 16(b):

for: ‘(b) on a frequent and systematic basis in an emission allowance for which there is not a liquid market in accordance with Article 2(1)(17)(b) of Regulation (EU) No 600/2014 where during the past 6 months the OTC transactions carried out by it on own account in the relevant type of emission allowances when executing client orders takes place on average once a week’

read: ‘(b) on a frequent and systematic basis in an emission allowance for which there is not a liquid market as defined in Article 2(1)(17)(a) of Regulation (EU) No 600/2014 where during the past 6 months the OTC transactions carried out by it on own account in the relevant type of emission allowances when executing client orders take place on average once a week;’.

In Article 16:

for: ‘(c) an investment firm internalises on a substantial basis in an emission allowance where the number of OTC trades carried out by it on own account when executing client orders is, during the past 6 months, equal to or larger than either of the following:

- (i) 30% of the total nominal amount traded in that type of emission allowances executed by the investment firm on own account or on behalf of clients and executed on a trading venue or OTC;
- (ii) 2.25% of the total nominal amount traded in that type of emission allowances executed in the Union on a trading venue or OTC.’

read: (c) on a substantial basis in an emission allowance where the size of OTC trading carried out by it on own account when executing client orders is, during the past 6 months, equal to or larger than any of the following:

- (i) 30% of the total turnover in that type of emission allowance executed by the investment firm on own account or on behalf of clients and executed on a trading venue or OTC;
- (ii) 2.25% of the total turnover in that type of emission allowance executed in the Union on a trading venue or OTC.’

In Article 19:

for: ‘5. For the purposes of paragraph 1, trading venues shall make available to the firms concerned, on request, estimates of the average of messages per second on a monthly basis two weeks after the end of each calendar month taking into account all messages submitted during the preceding 12 months.’

read: ‘5. For the purposes of paragraph 1, trading venues shall make available to the firms concerned, on request, estimates of the average number of messages per second

on a monthly basis two weeks after the end of each calendar month, thereby taking into account all messages submitted during the preceding 12 months.’.

In Article 38(1):

for: ‘(e) the job titles and departments of the relevant persons individuals involved in the provision of corporate finance advice on the price and allotment; and

read: ‘(e) the job titles and departments of the relevant individuals involved in the provision of corporate finance advice on the price and allotment of financial instruments; and’.

In Article 41:

for: ‘4. Investment firms engaging in the offering of financial instruments issued by themselves or other group entities to their clients and those instruments are included in the calculation of prudential requirements specified in Regulation (EU) No 575/2013 of the European Parliament and of the Council, Directive 2013/36/EU of the European Parliament and of the Council or Directive 2014/59/EU of the European Parliament and of the Council, shall provide such clients with additional information explaining the differences between the financial instrument and bank deposits in terms of yield, risk, liquidity and any protection provided in accordance with Directive 2014/49/EU of the European Parliament and of the Council.’

read: ‘4. Investment firms which offer financial instruments that are issued by themselves or other group entities to their clients and that are included in the calculation of prudential requirements specified in Regulation (EU) No 575/2013 of the European Parliament and of the Council, Directive 2013/36/EU of the European Parliament and of the Council or Directive 2014/59/EU of the European Parliament and of the Council, shall provide those clients with additional information explaining the differences between the financial instrument and bank deposits in terms of yield, risk, liquidity and any protection provided in accordance with Directive 2014/49/EU of the European Parliament and of the Council²³.’.

23 OJ L 173, 12.6.2014, p. 149.

In Article 45(3):

for: ‘(b) a retail client where that client that is considered as a professional client pursuant to Section I of Annex II to Directive 2014/65/EU.’

read: ‘(b) a retail client where that client is considered a professional client pursuant to Section I of Annex II to Directive 2014/65/EU.’

In Article 52:

for: ‘2. Investment firms providing investment advice, on an independent or non-independent basis, shall explain to the client the range of financial instruments that may be recommended, including its relationship with the issuers or providers of the instruments.’

read: ‘2. Investment firms providing investment advice, on an independent or non-independent basis, shall explain to the client the range of financial instruments that may be recommended, including the firm’s relationship with the issuers or providers of the instruments.’

In Article 53(3):

for: ‘(b) the investment firm has presented itself as independent for its business as a whole but has only done so with respect to the services for which it provides investment advice on an independent basis; and’

read: ‘(b) the investment firm has presented itself as independent for the services for which it provides investment advice on an independent basis;’.

In Article 65(4), in the first subparagraph:

for: ‘Investment firms shall take all sufficient steps to obtain the best possible result for their clients taking into account the factors referred to in Article 27(1) of Directive 2014/65/EU. The relative importance of these factors shall be determined by reference to the criteria set out in Article 59(1) and, for retail clients, to the requirement under Article 27(1) of Directive 2014/65/EU.’

read: ‘Investment firms shall take all sufficient steps to obtain the best possible result for their clients, taking into account the factors referred to in Article 27(1) of Directive 2014/65/EU. The relative importance of those factors shall be determined by reference to the criteria set out in Article 64(1) and, for retail clients, to the requirement under Article 27(1) of Directive 2014/65/EU.’.

In Article 77(1):

for: ‘(b) the last closing share price of the first year of trading, if its financial instruments have been admitted to trading for more than one year but less than two years;

‘(c) the average of the last closing share prices of each of the first two years of trading, if its financial instruments have been admitted to trading for more than two years but less than three years.’

read: ‘(b) the last closing share price of the first year of trading, if its shares have been admitted to trading for more than one year but less than two years;

‘(c) the average of the last closing share prices of each of the first two years of trading, if its shares have been admitted to trading for more than two years but less than three years.’.

In Article 78(2):

for: ‘(g) requires the issuers whose securities are traded on its venue to publish annual financial reports within 6 months after the end of each financial year, half yearly financial reports within 4 months after the end of the first 6 months of each financial year;’

read: ‘(g) requires the issuers whose securities are traded on its venue to publish annual financial reports within 6 months after the end of each financial year, and half yearly financial reports within 4 months after the end of the first 6 months of each financial year;’.

In Article 80(2):

for: ‘For the purpose of determining whether a suspension or a removal is likely to cause significant damage to the investors’ interest or the orderly functioning of the markets in

any particular case, the national competent authority, an investment firm or a market operator operating an MTF or an OTF shall consider all relevant factors, including:’

read: ‘For the purpose of determining whether a suspension or a removal is likely to cause significant damage to the investors’ interest or the orderly functioning of the markets in any particular case, the national competent authority, a market operator operating a regulated market or an investment firm or a market operator operating an MTF or an OTF shall consider all relevant factors, including:’.

In Article 80:

for: ‘(3) The factors set out in paragraph 3 shall also be taken into consideration where a national competent authority, an investment firm or a market operator operating an MTF or an OTF decides not to suspend or remove a financial instrument on the basis of circumstances not covered by the list of paragraph 1.’

read: ‘(3) The factors set out in paragraph 2 shall also be taken into consideration where a national competent authority, a market operator operating a regulated market or an investment firm or a market operator operating an MTF or an OTF decides not to suspend or remove a financial instrument on the basis of circumstances not covered by the list of paragraph 1.’.