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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 Uwe CORSEPIUS, Secretary-General of the Council of the European Union

No. Cion doc.:	C(2014) 9431 final
Subject:	CORRIGENDUM of 15.12.2014 to Commission Delegated Regulation C(2014) 6200 final of 4 September 2014 amending Delegated Regulation (EU) No 241/2014 as regards own funds requirements for firms based on fixed overheads (Text with EEA relevance)

Delegations will find attached document C(2014) 9431 final.

Encl.: C(2014) 9431 final



Brussels, 15.12.2014
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CORRIGENDUM

of 15.12.2014

**to Commission Delegated Regulation C(2014) 6200 final of 4 September 2014 amending
Delegated Regulation (EU) No 241/2014 as regards own funds requirements for firms
based on fixed overheads**

(Text with EEA relevance)

Explanatory memorandum

1. CONTEXT OF THE CORRIGENDUM

On 4 September 2014 the Commission adopted Delegated Regulation C(2014) 6200 final amending Delegated Regulation (EU) No 241/2014 as regards own funds requirements for firms based on fixed overheads. The Delegated Regulation covers the following:

- it specifies what fixed overheads are in order to harmonise the methodology for the calculations and elaborates on the calculation of projected fixed overheads (for cases where a firm has not completed one year of business);

it provides criteria for determining when a change in the business activities of a firm is material, to the effect that competent authorities can make adjustments to the capital requirements of that firm.

After the adoption of the Delegated Regulation, a drafting mistake that has an impact on the scope of application of the Regulatory Technical Standards ('RTS') has been identified. The mistake is in the definition of the term 'firm' in Article 34b(1). The definition reads as follows:

“1. For the purposes of this Chapter, “firm” means an entity referred to in point (2)(c) of Article 4(1) of Regulation (EU) No 575/2013 or an investment firm.”

Point (2)(c) of of Article 4(1) of Regulation (EU) No 575/2013 reads as follows:

“(c) firms which are not authorised to provide the ancillary service referred to in point (1) of Section B of Annex I to Directive 2004/39/EC, which provide only one or more of the investment services and activities listed in points 1, 2, 4 and 5 of Section A of Annex I to that Directive, and which are not permitted to hold money or securities belonging to their clients and which for that reason may not at any time place themselves in debt with those clients;” (emphasis added)

At the same time, Article 97(1) of Regulation (EU) No 575/2013 which lays down the fixed overheads requirement reads as follows:

“1. In accordance with Articles 95 and 96, an investment firm and firms referred to in point (2)(c) of Article 4(1) that provide the investment services and activities listed in points (2) and (4) of Section A of Annex I to Directive 2004/39/EC shall hold eligible capital of at least one quarter of the fixed overheads of the preceding year.” (emphasis added)

It follows that the definition of the term 'firm' provided in the Delegated Regulation inadvertently expands the personal scope of application of the RTS beyond what was envisaged in Regulation (EU) No 575/2013.

The mistake needs to be rectified to align the Delegated Regulation with the intentions of the draft RTS submitted to the Commission by the European Banking Authority and with the empowerment in Article 97(4) of Regulation (EU) No 575/2013.

2. LEGAL ELEMENTS OF THE CORRIGENDUM

The corrigendum clarifies that the definition of the term ‘firm’ only covers entities referred to in point (2)(c) of Article 4(1) of Regulation (EU) No 575/2013 that provide the investment services and activities listed in points (2) and (4) of Section A of Annex I to Directive 2004/39/EC.

CORRIGENDUM

to Commission Delegated Regulation C(2014) 6200 final of 4 September 2014 amending Delegated Regulation (EU) No 241/2014 as regards own funds requirements for firms based on fixed overheads

(Text with EEA relevance)

On page 5, in Article 34b(1):

for: ‘... an entity referred to in point (2)(c) of Article 4(1) of Regulation (EU) No 575/2013 or an investment firm.’

read: ‘... an entity referred to in point (2)(c) of Article 4(1) of Regulation (EU) No 575/2013 that provides the investment services and activities listed in points (2) and (4) of Section A of Annex I to Directive 2004/39/EC or an investment firm.’