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COMMISSION DELEGATED REGULATION (EU) 2017/1018

of 29 June 2016

supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards specifying information to be notified by investment firms, market operators and credit institutions

(Text with EEA relevance)

(OJ L 155, 17.6.2017, p. 1)

Corrected by:

►**C1** Corrigendum, OJ L 292, 10.11.2017, p. 119 (2017/1018)

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COMMISSION DELEGATED REGULATION (EU) 2017/1018

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(Text with EEA relevance)

Article 1

Scope

1. This Regulation shall apply to investment firms and market operators operating a multilateral trading facility ('MTF') or an organised trading facility ('OTF').

2. This Regulation shall also apply to credit institutions, authorised under Directive 2013/36/EU of the European Parliament and of the Council [1], which provide one or more investment services or perform investment activities, and wish to use tied agents under the following rights:

(a) the right of freedom to provide investment services and activities in accordance with Article 34(5) of Directive 2014/65/EU;

(b) the right of establishment in accordance with Article 35(7) of Directive 2014/65/EU.

Article 2

Definitions

For the purposes of this Regulation, the following definitions shall apply:

(a) 'investment services and activities passport notification' means a notification made in accordance with Article 34(2) of Directive 2014/65/EU, or in accordance with Article 34(5) of Directive 2014/65/EU;

(b) 'branch passport notification' or 'tied agent passport notification' means a notification made in accordance with Article 35(2) of Directive 2014/65/EU, or in accordance with Article 35(7) of Directive 2014/65/EU;

(c) 'notification for the provision of arrangements to facilitate access to an MTF or an OTF' means a notification made in accordance with Article 34(7) of Directive 2014/65/EU.

[1] Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

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(d) ‘passport notification’ means an investment services and activities passport notification, a branch passport notification, tied agent passport notification, or a notification for the provision of arrangements to facilitate access to an MTF or an OTF.

Article 3

Information to be notified for the purposes of the investment services and activities passport notification

1. Investment firms shall ensure that the investment services and activities passport notification submitted pursuant to Article 34(2) of Directive 2014/65/EU includes the following information:

(a) the name, address and contact details of the investment firm along with the name of a specified contact person at the investment firm;

(b) a programme of operations which includes the following items:

(i) details of the particular investment services, activities and ancillary services to be provided in the host Member State and the financial instruments to be used; and

(ii) confirmation as to whether the investment firm wishes to use tied agents, established in its home Member State, to provide services in the host Member State and, if so the name, address, contact details of such tied agents and the investment services or activities, ancillary services and financial instruments to be provided by the latter.

2. Credit institutions referred to in Article 1(2)(a) submitting an investment services and activities passport notification in accordance with Article 34(5) of Directive 2014/65/EU shall ensure that such notification contains the information set out in points (a) and (b)(ii) of paragraph 1.

Article 4

Information to be notified concerning the change of investment services and activities particulars

Investment firms and such credit institutions as are referred to in Article 1(2)(a) shall ensure that a notification to communicate a change in particulars, pursuant to Article 34(4) of Directive 2014/65/EU, includes details of any change to any of the information contained in the initial investment services and activities passport notification.

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Article 5

Information to be notified concerning arrangements to facilitate access to an MTF or OTF

Investment firms and market operators submitting notifications regarding arrangements to facilitate access to an MTF or OTF pursuant to Article 34(7) of Directive 2014/65/EU shall ensure such notification includes the following information:

(a) the name, address and contact details of the investment firm or the market operator, along with the name of a specified contact person at the investment firm or the market operator;

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(b) a short description of the arrangements and the date from which those arrangements will be provided in the host Member State;

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(c) a short description of the business model of the MTF or the OTF, including the type of the financial instruments traded, the type of participants, and the marketing approach of the MTF or OTF to target remote users, members or participants.

Article 6

Information to be notified in a branch passport notification or a tied agent passport notification

1. Investment firms and such credit institutions as are referred to in Article 1(2)(b) shall ensure that a branch passport notification or a tied agent passport notification submitted pursuant to Article 35(2) or Article 35(7) of Directive 2014/65/EU as applicable, includes the following information:

(a) the name, address and contact details of the investment firm or credit institution in the home Member State, and the name of a specified contact person at the investment firm or credit institution;

(b) the name, address and contact details in the host Member State of the branch or of the tied agent from which documents may be obtained;

(c) the name of those persons responsible for the management of the branch or of the tied agent;

(d) reference to the location, electronic or otherwise, of the public register where the tied agent is registered; and

(e) a programme of operations.

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2. The programme of operations referred to in point (e) of paragraph 1 shall comprise the following items:

(a) a list of investment services, activities, ancillary services and financial instruments to be provided;

(b) an overview explaining how the branch or the tied agent will contribute to the investment firm's, credit institution's or group's strategy, and setting out whether the investment firm is a member of a group, and what the main functions of the branch or tied agent will be;

(c) a description of the type of client or counterparty with which the branch or tied agent will be dealing and of how the investment firm or credit institution will obtain and deal with those clients and counterparties;

(d) the following information on the organisational structure of the branch or tied agent:

(i) functional, geographical and legal reporting lines if a matrix management structure is in operation;

(ii) description of the manner in which the branch or the tied agent fits into the corporate structure of the investment firm or credit institution, or of the group if the investment firm or credit institution is a member of a group;

(iii) the rules for reporting by the branch or the tied agent to the head office;

(e) details of individuals performing key functions with the branch or the tied agent, including the individuals responsible for day-to-day branch or tied agent operations, compliance and dealing with complaints;

(f) details of any outsourcing arrangements critical to the operations of the branch or the tied agent;

(g) summary details of the systems and controls that will be put in place, including:

(i) arrangements that will be put in place to safeguard client money and customer assets;

(ii) arrangements for the compliance with the rules of conduct of business and other obligations that fall under the responsibility of the competent authority of the host Member State according to Article 35(8) of Directive 2014/65/EU and record keeping under Article 16(6) of that Directive;

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(iii) internal arrangements for controls on staff, which shall include controls over personal account dealing;

(iv) arrangements to comply with anti-money-laundering obligations;

(v) details of controls over outsourcing and other arrangements with third parties in connection with the investment services or activities carried on by the branch or the tied agent;

(vi) the name, address and contact details of the accredited compensation scheme of which the investment firm or credit institution is a member;

(h) forecast statements for both profit and loss and cash flow, over an initial 36-month period.

3. When a branch is to be established in a host Member State and intends to use tied agents in that Member State, in accordance with Article 35(2)(c) of Directive 2014/65/EU, the programme of operations referred to in point (e) of paragraph 1 shall also comprise information regarding the identity, address and contact details of each such tied agent.

Article 7

Information to be notified concerning the change of branch or tied agent particulars

1. Investment firms and such credit institutions as are referred to in Article 1(2)(b) shall ensure that a notification to communicate a change in particulars, pursuant to Article 35(10) of Directive 2014/65/EU, includes details of any change to any of the information contained in the initial branch passport notification or tied agent passport notification.

2. Investment firms and such credit institutions as are referred to in Article 1(2)(b) shall ensure that any changes to the branch passport notification or tied agent passport notification that relate to the termination of the operation of the branch, or the cessation of the use of a tied agent, shall include the following information:

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(a) the name of the person or persons who will be responsible for the process of terminating the operation of the branch or the tied agent;

(b) the schedule of the planned termination;

(c) the details and processes proposed to wind down the business operations, including details of how client interests are to be protected, complaints resolved and any outstanding liabilities discharged.

Article 8

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*.

It shall apply from the date that appears first in the second subparagraph of Article 93(1) of Directive 2014/65/EU.

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