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Commission Implementing Regulation (EU) 2018/1105 of 8 August 2018 laying down implementing technical standards with regard to procedures and forms for the provision of information by competent authorities to ESMA under Regulation (EU) 2016/1011 of the European Parliament and of the Council (Text with EEA relevance)

COMMISSION IMPLEMENTING REGULATION (EU) 2018/1105

of 8 August 2018

laying down implementing technical standards with regard to procedures and forms for the provision of information by competent authorities to ESMA under Regulation (EU) 2016/1011 of the European Parliament and of the Council

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014[(1)], and in particular the third subparagraph of Article 47(3) thereof,

Whereas:

(1) Article 47(2) of Regulation (EU) 2016/1011 requires competent authorities to provide ESMA with all information necessary to carry out its duties. To ensure efficient and effective communication, competent authorities and ESMA should use defined channels of communication, including designated contact persons and standardised forms, for requesting information, acknowledging receipt of requests for information and responding to requests for information.

(2) The information that competent authorities are required to provide pursuant to Article 47(2) of Regulation (EU) 2016/1011 includes the information needed to enable ESMA to establish and maintain the public register referred to in Article 36(1) of that Regulation, in particular the information listed in points (a), (c) and (d) of that Article and any subsequent changes to that information. Competent authorities and ESMA should be required to agree the technical specifications governing submission of that information to ESMA's website in order to ensure that the information is transmitted accurately and securely.

(3) The information that competent authorities are required to provide to ESMA under Regulation (EU) 2016/1011 may contain personal data and other sensitive information that is not in the public domain. It is therefore important that the provision of information is governed by appropriate safeguards and confidentiality rules.

(4) Competent authorities and ESMA should be given sufficient time to put in place procedures for the provision of information set out in this Regulation. This Regulation should therefore start to apply two months after it enters into force,

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(5) This Regulation is based on the draft implementing technical standards submitted by the ESMA to the Commission.

(6) ESMA has not conducted open public consultations on the draft implementing technical standards on which this Regulation is based, nor has it analysed the potential related costs and benefits, as ESMA concluded that this would have been disproportionate in relation to the scope and impact of the implementing technical standards, taking into account the fact that they would only directly concern the national competent authorities of the Member States, and not market participants.

(7) ESMA has requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[(2)],

HAS ADOPTED THIS REGULATION:

Article 1

Notification to ESMA for the ESMA register

1 To enable ESMA to establish and maintain the public register referred to in Article 36(1) of Regulation (EU) 2016/1011, competent authorities shall notify ESMA of the information listed in points (a), (c) and (d) of that Article, and of any change to that information, within five working days of the relevant decision.

2 The relevant decision is whichever one of the following decisions by a competent authority gives rise to the obligation under Regulation (EU) 2016/1011 to notify ESMA of that particular information or change:

a a decision to authorise or register an administrator pursuant to Article 34(6)(a) or (b) of Regulation (EU) 2016/1011;

b a decision to withdraw or suspend the authorisation or registration of an administrator pursuant to Article 35(1) of that Regulation;

c a decision to recognise an administrator located in a third country pursuant to Article 32(5) of that Regulation;

d a decision to suspend or withdraw such recognition pursuant to Article 32(8) of that Regulation;

e a decision to authorise the endorsement of a benchmark or family of benchmarks pursuant to Article 33(3) of that Regulation;

f a decision to require the cessation of the endorsement of a benchmark or family of benchmarks pursuant to Article 33(6) of that Regulation.

Any information or change to that information referred to in paragraph 1 shall be transmitted to ESMA using the ESMA's channel of communication that ensures that completeness, integrity and confidentiality of the information are maintained during the transmission.

3 Competent authorities and ESMA shall agree on the information technology governing the submission of information to ESMA's website using the ESMA's channel of communication.

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Article 2

Notifications to ESMA of benchmarks by recognised administrators

Any notification to be made to ESMA pursuant to Article 32(6) of Regulation (EU) 2016/1011 shall be made by an electronic means that is capable of ensuring the completeness, integrity and confidentiality of the data throughout the transmission process.

Article 3

Requests for information

1 Any request by ESMA for information to be provided by a competent authority pursuant to Article 47(2) of Regulation (EU) 2016/1011, other than information covered by Articles 1 and 2 of this Regulation, shall be made using the form set out in Annex I to this Regulation.

2 A competent authority from whom information is requested pursuant to Article 47(2) of Regulation (EU) 2016/1011 ('the requested authority') shall acknowledge receipt of the request within seven days of receipt of the request, using the form set out in Annex II to this Regulation.

Article 4

Reply to a request for information

1 The requested authority shall provide to ESMA the information requested, using the form set out in Annex III to this Regulation. The requested authority shall take all reasonable steps within its powers to obtain and provide the information requested. If the requested authority cannot provide the information by the estimated response date set out in its acknowledgement of receipt of the request for information, it shall notify ESMA without delay and provide a new estimated response date together with reasons why an extension is needed.

2 The requested authority shall consult ESMA, where necessary, on any clarifications regarding the type of information requested and on the frequency of any updates that are required.

Article 5

Means of transmission

All requests for information, acknowledgements of receipt and replies to requests for information referred to in Articles 3 and 4 shall comply with the following rules:

(a) they shall be in writing;

(b) they shall be sent by post or fax, or by an electronic means that is capable of ensuring the completeness, integrity and confidentiality of the information throughout the transmission process;

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(c) they shall be addressed:

(i) in the case of a request sent to a competent authority, to the contact person designated by the competent authority under Article 7;

(ii) in the case of an acknowledgement of receipt or a reply sent to ESMA, to the contact point specified by ESMA in its request for information.

Article 6

Confidentiality

1 Competent authorities shall keep confidential the fact that a request for information has been issued under Article 47(2) of Regulation (EU) 2016/1011, the content of that request and any matter arising in the course of executing the request, in particular any consultations between ESMA and the competent authority in relation to the request.

2 The competent authority may, however, disclose such facts or matters if either ESMA consents to the disclosure or disclosure is necessary for legal proceedings.

Article 7

Contact persons

Each competent authority shall designate a contact person for the purposes of this Regulation, and communicate the name and contact details of that contact person to ESMA, within 30 days of the date of entry into force of this Regulation. Any subsequent changes in the designation or contact details of a contact person shall be communicated to ESMA without delay.

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 29 October 2018.

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

Done at Brussels, 8 August 2018.

For the Commission

The President

Jean-Claude JUNCKER

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ANNEX I

Form for a request for information

REQUEST FOR INFORMATION

Reference number: …

Date: …

General information

FROM:

Member State (if applicable):

Requesting Authority:

Legal address:

(Contact details of the designated contact person under Article 7 of the Commission Implementing Regulation (EU) 2018/1105)

Name:

Telephone:

Email:

TO:

Member State (if applicable):

Requested Authority:

Legal address:

(Contact details of the designated contact person under Article 7 of Implementing Regulation (EU) 2018/1105)

Name:

Telephone:

Email:

Dear [*insert name*]

In accordance with Article 3 of the Implementing Regulation (EU) 2018/1105 laying down implementing technical standards [to determine procedures and forms for exchange of information] information is sought in relation to the matter(s) set out in further detail below.

I would be grateful for the above information by [*Insert indicative date for the reply*] or, if that is not possible, for an indication as to when you anticipate being in a position to provide the information which is sought.

Reasons for the request for information

…

…

…