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Commission Implementing Regulation (EU) 2017/2382 of 14 December 2017 laying down implementing technical standards with regard to standard forms, templates and procedures for the transmission of information in accordance with Directive 2014/65/EU of the European Parliament and of the Council (Text with EEA relevance)

COMMISSION IMPLEMENTING REGULATION (EU) 2017/2382

of 14 December 2017

laying down implementing technical standards with regard to standard forms, templates and procedures for the transmission of information in accordance with Directive 2014/65/EU of the European Parliament and of the Council

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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[(1)], and in particular Articles 34(9) and 35(12) thereof,

Whereas:

(1) It is appropriate to set out common standard forms, procedures and templates for the submission of information required when investment firms, market operators, and, where required by Directive 2014/65/EU, credit institutions wish to provide investment services and perform activities in another Member State under the freedom to provide services or under the right of establishment.

(2) The provisions in this Regulation should, in view of Articles 34(1) and 35(1) of Directive 2014/65/EU also apply to credit institutions authorised under Directive 2013/36/EU of the European Parliament and of the Council[(2)] which use tied agents to provide investment services under the right of freedom to provide investment services or by establishing of a branch.

(3) It is important to establish standard forms covering the language and means of communication of passport notifications which may be used by investment firms, market operators, and, where necessary, credit institutions, and the competent authorities of home and host Member States in order to facilitate the unhindered provision of investment services and activities across Member States and the efficient performance by the competent authorities of their respective tasks and responsibilities.

(4) An assessment of the accuracy and completeness of the submitted notification by the competent authority of the home Member State is necessary in order to ensure the quality of (i) the information submitted by the investment firm, market operator, or, where necessary, credit institution to the competent authority of the home Member

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State; and (ii) the information submitted by the competent authority of the home Member State to the competent authority of the host Member State.

(5) Provisions requiring the competent authority of the home Member State to indicate where the notification to is found to be incomplete or incorrect are necessary to ensure clarity in the identification and communication of any missing or incorrect elements and to facilitate the process of addressing such issues and resubmitting the complete and correct information.

(6) Acknowledgement of receipt of a submitted branch passport notification or tied agent passport notification is necessary to ensure clarity regarding the date of receipt of the relevant notification and the exact date on which the investment firm may establish the branch or make use of a tied agent established in the host Member State.

(7) To ensure coherence, specific forms should be used where an investment firm or a market operator, operating a multilateral trading facility or organised trading facility wishes to provide within the territory of another Member State appropriate arrangements so as to facilitate access to and trading on those systems by remote users, members or participants established in that Member State, in order to ensure the adequacy of both the information submitted by the investment firm or market operator to the competent authority of the home Member State and the information submitted by the competent authority of the home Member State to the competent authority of the host Member State.

(8) For reasons of consistency and in order to ensure the smooth functioning of the financial markets, it is necessary that the provisions laid down in this Regulation and the related national provisions transposing Directive 2014/65/EU apply from the same date.

(9) This Regulation is based on the draft implementing technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.

(10) In accordance with Article 15 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[(3)], ESMA has conducted open public consultations on such draft implementing technical standards, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of that Regulation,

HAS ADOPTED THIS REGULATION:

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 which provide one or more investment services or perform investment activities under Directive 2014/65/EU, and wish to use tied agents under any of 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;

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

Article 2

General requirements

1 Any notification or communication submitted under this Regulation shall be provided in an official Union language accepted by both the competent authority of the home Member State and by the competent authority of the host Member State.

It shall be submitted in paper form or, where accepted by the relevant competent authority, by electronic means.

2 The competent authorities shall make publicly available information on the accepted language(s) and means of submission, including contact details for passport notifications.

Article 3

Submission of the investment services and activities passport notification

1 An investment firm shall submit to the competent authority of the home Member State an investment services and activities passport notification pursuant to Article 34(2) or (5) of Directive 2014/65/EU the form set out in Annex I.

2 An investment firm shall submit, for each Member State in which it intends to operate, a separate investment services and activities passport notification to the competent authority of the home Member State pursuant to paragraph 1.

3 An investment firm or a credit institution referred to in Article 1(2)(a) wishing to provide investment services or activities through a tied agent established in the home Member State shall submit an investment services and activities passport notification to the competent authority of the home Member State, by filling in only those parts relevant to the tied agent in the form set out in Annex I.

Article 4

Assessment of completeness and accuracy of the investment services and activities passport notification

1 On receipt of an investment services and activities passport notification pursuant to Article 3, the competent authority of the home Member State shall assess the completeness and accuracy of the information provided.

2 Where the information provided is found to be incomplete or incorrect, the competent authority of the home Member State shall, without undue delay, inform the investment firm or credit institution referred to in Article 1(2)(a) thereof. The competent authority of the home Member State shall indicate in which particular respect the information has been found to be incomplete or incorrect.

3 The 1-month period referred to in Article 34(3) and in the second subparagraph of Article 34(5) of Directive 2014/65/EU shall begin upon receipt of an investment services and activities passport notification containing information that is found to be complete and correct.

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Article 5

Communication regarding the investment services and activities passport notification

1 The competent authority of the home Member State shall, within 1 month of receiving a notification pursuant to Article 3, inform the competent authority of the host Member State of that notification, using the form set out in Annex II, together with a copy of the notification.

2 The competent authority of the home Member State shall, without undue delay, inform the investment firm or the credit institution referred to in Article 1(2)(a) about the onward communication pursuant to paragraph 1, including the date of that communication.

Article 6

Submission of the change of investment services and activities particulars notification

1 In the event of a change in any of the particulars of an investment services and activities passport notification, the investment firm or credit institution referred to in Article 1(2)(a) shall submit a notification to the competent authority of the home Member State using the form set out in Annex I.

2 For the purposes of the notification pursuant to paragraph 1 of this Article, the investment firm or credit institution referred to in Article 1(2)(a) shall complete only those parts of the form set out in Annex I relevant to the changes in the particulars of the investment services and activities passport notification.

3 For the purposes of the notification of changes related to the investment services, activities, ancillary services or financial instruments provided, the investment firm or credit institution referred to in Article 1(2)(a) shall list all the investment services, activities, ancillary services or financial instruments that it provides at the time of the notification, or intends to provide in the future.

Article 7

Communication regarding the change of investment services and activities particulars notification

1 After receiving a notification pursuant to Article 6, the competent authority of the home Member State shall, without undue delay, communicate the notified changes to the competent authority of the host Member State, using the form set out in Annex III, together with a copy of the notification pursuant to Article 6.

2 In the event that the authorisation of an investment firm or credit institution is withdrawn or cancelled, the competent authority of the home Member State shall notify the competent authority of the host Member State, using the form set out in Annex III.

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Article 8

Submission of the notification for the provision of arrangements to facilitate access to an MTF or an OTF

An investment firm or a market operator operating an MTF or OTF that intends to provide, within the territory of another host Member State, appropriate arrangements to facilitate access to and trading on those systems by remote users, members or participants established in that host Member State shall notify to the competent authority of the home Member State the details of the host Member State in which it intends to provide such arrangements, using the form set out in Annex IV.

Article 9

Communication regarding the notification for the provision of arrangements to facilitate access to an MTF or an OTF

1 The competent authority of the home Member State shall, within 1 month of receiving the notification pursuant to Article 8, inform the competent authority of the host Member State of that notification, using the form set out in Annex V, together with a copy of the notification.

2 The competent authority of the home Member State shall, without undue delay, inform the investment firm or the market operator operating an MTF or an OTF about the onward communication pursuant to paragraph 1, including the date of that communication.

Article 10

Submission of the change of particulars for the provision of arrangements to facilitate access to an MTF or an OTF notification

1 In case of a change in any of the particulars of a notification for the provision of arrangements to facilitate access to an MTF or an OTF, the investment firm or the market operator operating an MTF or an OTF shall submit a notification to the competent authority of the home Member State using the form set out in Annex IV.

2 For the purposes of the notification pursuant to paragraph 1, the investment firm or the market operator operating an MTF or an OTF shall complete only those parts of the form set out in Annex IV relevant to the changes in the particulars of the notification for the provision of arrangements to facilitate access to an MTF or an OTF.

Article 11

Communication regarding the change of particulars for the provision of arrangements to facilitate access to an MTF or an OTF notification

After receiving a notification pursuant to Article 10(1), the competent authority of the home Member State shall, without undue delay, communicate the notified changes to the competent authority of the host Member State, using the form set out in Annex III, together with a copy of the notification.