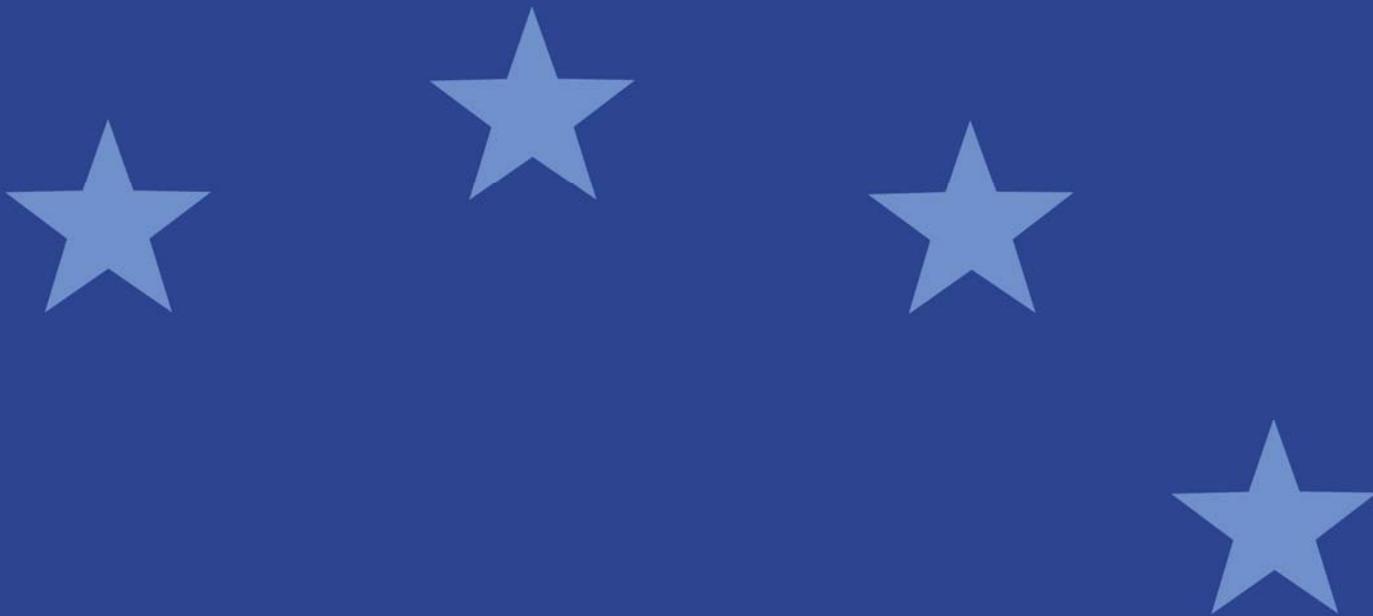




European Securities and  
Markets Authority

# Final Report

**MiFID II/MiFIR draft Technical Standards on authorisation, passporting, registration of third country firms and cooperation between competent authorities**





## Table of Contents

1. Introduction .....	6
2. Overview .....	8
2.1. Procedures for granting and refusing requests for authorisation of investment firms 8	
Regulatory technical standards under Article 7(4) of MiFID II .....	8
Implementing technical standards under Article 7(5) of MiFID II .....	10
2.2. Freedom to provide investment services and activities / Establishment of a branch...	
.....	12
Regulatory technical standards under Article 34(8) and 35(11) of MiFID II .....	12
Implementing technical standards under Article 34(9) and 35(12) of MiFID II.....	14
2.3. Provision of services and performance of activities by third-country firms following an equivalence decision (general provisions).....	16
2.4. Cooperation between competent authorities .....	18
3. Draft technical standards .....	20
RTS 1: Draft regulatory technical standards under Article 7(4) of MiFID II.....	20
ITS 2: Draft implementing technical standards under Article 7(5) of Directive 2014/65/EC32	
RTS 3: Draft regulatory technical standards under Articles 34(8) and 35(11) of MiFID II ..	49
ITS 4: Draft implementing technical standards under Articles 34(9) and 35(12) of MiFID II .....	56
RTS 5: Draft regulatory technical standards under Article 46(7) of MiFIR.....	98
RTS 6: Draft regulatory technical standards under Article 80(3) of MiFID II.....	102
4. Cost-benefit analysis.....	110
4.1. Procedures for granting and refusing requests for authorisation of investment firms ..	
.....	110
4.2. Freedom to provide investment services and activities / Establishment of a branch...	
.....	123
4.3. Provision of services and performance of activities by third-country firms following an equivalence decision (general provisions).....	129
4.4. Cooperation between competent authorities in supervisory activities, for on-site verifications or investigations.....	130

## Acronyms and definitions used

BIC	Business Identifier Code. An 11-character alpha-numerical code that uniquely identifies a financial or non-financial institution. It is defined by ISO code 9362
Commission	European Commission
CP	Consultation Paper
DP	Discussion Paper
EC	European Commission
EEA	European Economic Area
ESMA	European Securities and Markets Authority
ESMA Regulation	Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC
EU	European Union
ITS	Implementing Technical Standards
LEI	Legal entity identifier
MiFID or MiFID I	Markets in Financial Instruments Directive – Directive 2004/39/EC of the European Parliament and the Council
MiFID II	Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU
MiFIR	Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments and amending Regulation (EU) No 648/2012
MS	Member State
OJ	The Official Journal of the European Union
PRIIPs	Packaged retail and insurance-based investment products



RTS	Regulatory Technical Standards
SMSG	Securities and Markets Stakeholder Group
TFEU	Treaty on the Functioning of the European Union
UCITS	Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009, on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)

# 1. Introduction

## Reasons for publication

1. The final legislative texts of Directive 2014/65/EU (MiFID II) and Regulation (EU) No 600/2014 (MiFIR) were approved by the European Parliament on 15 April 2014 and by the European Council on 13 May 2014. The two texts were published in the Official Journal on 12 June 2014 and entered into force on the twentieth day following this publication – i.e. 2 July 2014.
2. MiFID II and MiFIR delegate or confer powers to the European Commission (Commission) to adopt regulatory technical standards (RTS) and implementing technical standards (ITS) on a number of areas.
3. The European Securities and Markets Authority's (ESMA) Consultation Paper (CP) on MiFID/MiFIR technical standards<sup>1</sup> was published on 19 December 2014. The consultation period closed on 2 March 2015. All non-confidential responses received by ESMA have been published on the ESMA website.
4. This Final Report (FR) covers the majority of the draft RTS and ITS on investor protection topics which ESMA is expected to develop. The remaining draft technical standards ESMA is mandated to develop under MiFID II and MiFIR will be published by the end of 2015.
5. This FR sets out the feedback statement to the CP which provides an analysis of responses to the consultation, describes any material changes to the technical standards set out in Section III (or confirms that there have been no material changes), and explains the reasons for this in the light of feedback received. This FR also includes the final draft technical standards.
6. The rationale of those items covered already in the CP for which no relevant changes have been introduced, is not developed again in this FR. ESMA recommends, therefore, reading this document together with the CP, published on 19 December 2015, and the related Discussion Paper<sup>2</sup> (DP), published on 22 May 2014, to have a complete overview of the rationale for ESMA's proposals.

## Contents

7. Section II contains the analysis of technical standards following the responses to the consultation. Section III contains the draft technical standards. Section IV contains the cost-benefit analysis.

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<sup>1</sup> ESMA/2014/1570.

<sup>2</sup> ESMA/2014/548.

### **Next steps**

8. This FR is submitted to the Commission for endorsement of the draft RTS and ITS. From the date of submission the European Commission should take the decision on whether to endorse the RTS and ITS within three months.

## 2. Overview

### 2.1. Procedures for granting and refusing requests for authorisation of investment firms

#### Regulatory technical standards under Article 7(4) of MiFID II

##### Background/Mandate

##### Article 7(4) of MiFID II

*ESMA shall develop draft regulatory technical standards to specify:*

- (a) the information to be provided to the competent authorities under paragraph 2 of Article 7 of MiFID II;*
- (b) the requirements applicable to the management of investment firms under Article 9(6) of MiFID II and the information for the notifications under Article 9(5) of MiFID II;*
- (c) the requirements applicable to shareholders and members with qualifying holdings, as well as obstacles which may prevent effective exercise of the supervisory functions of the competent authority, under Article 10(1) and (2) of MiFID II.*

*ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.*

##### Analysis following feedback from stakeholders

##### Information to be provided to the competent authorities under Articles 7(2) and 9(5) of MiFID II

1. ESMA received few comments on its proposed list of information to be provided to competent authorities by applicant firms. Overall, the respondents agreed with ESMA's approach on the topic, but made the following remarks on some specific aspects of the proposals:
  - i. Respondents asked ESMA to clarify that these requirements will apply only to new requests for authorisations. ESMA confirms that these RTS relate only to new requests for authorisation. However ESMA notes that competent authorities, as set out in Article 21 of MiFID II, shall monitor that firms comply at all times with the conditions for initial authorisation and therefore regularly review conditions for initial authorisation.

- ii. Some respondents noted that some requirements set out in the CP appear to be too broad. These respondents specifically referred to the proposals on the information on financial and non-financial interests to be submitted by applicant firms and noted that these are too intrusive and may create issue with existing data privacy regulation. ESMA has amended the text of the RTS in order to take these comments into account.
- iii. Few respondents stated that the requirement to provide a programme of initial operations for the first three years is not realistic and that a 12 months time horizon would be more appropriate. ESMA notes these comments but believes that it is important for applicant firms to plan their activities beyond the one year horizon. Information on the three years following the application will allow national competent authorities to better understand the longer-term plans of the applicant firm.

*Requirements applicable to the management of investment firms under Article 9(6) of MiFID II*

2. The only comment received by ESMA on the topic of requirements for the authorisation of an investment firms which is a natural person or a legal person managed by a single natural person was in relation to supposed impossibility for the person managing the firm to nominate a person to substitute the manager if he/she is unable to perform his/her duties, seen the specific intuitu personae nature of the service provided to clients. ESMA notes these comments but underlines that the requirement for investment firms, which are a natural person or a legal person managed by a single natural person, to empower a person to substitute the manager, is fundamental to ensure that clients' interests are protected and that regulatory obligations are met in case the person managing the firm is unable to do so. ESMA has however made slight changes to the wording of Article 8 to clarify the content of the requirement.

*Requirements applicable to shareholders and members with qualifying holdings*

3. Respondents agreed with ESMA's suggested approach on the topic. No significant amendments were therefore made to the consulted text.

*Obstacles which may prevent effective exercise of the supervisory functions of the competent authority*

4. Respondents agreed with ESMA's suggested approach on the topic. ESMA has made some further clarifications to the text without to further clarify the draft technical standard.

## Implementing technical standards under Article 7(5) of MiFID II

### Background/Mandate

#### Article 7(5) of MiFID II

*ESMA shall develop draft implementing technical standards to determine standard forms, templates and procedures for the notification or provision of information provided for in paragraph 2 of this Article and in Article 9(5).*

*ESMA shall submit those draft implementing technical standards to the Commission by 3 January 2016.*

#### Analysis following feedback from stakeholders

5. ESMA received few comments on its proposed standard forms and templates for the notification or provision of information to the competent authority by applicant firms. The respondents agreed with ESMA's approach on the topic, but made the following remarks on some specific aspects of the proposals:
  - i. Respondents asked ESMA to clarify that the provision of a fax number in the application is optional, given that fax are becoming increasingly obsolete. ESMA agrees and has clarified the text in this regard.
  - ii. Respondents queried why application forms include reference to a 'designated contact person' and also a 'person in charge of preparing the application'. ESMA notes that, as currently set out, the forms in the draft ITS leave the option to applicant firms to distinguish between a person responsible for the application process and a simple contact point. Applicant firms, however, can chose to provide the name of a single person for both roles.
  - iii. Respondents suggested merging the sections of the forms in relation to qualification and training of members of the management body. ESMA has amended the draft ITS in view of the comments received.
6. On the topic of the procedure for the application process, respondents agreed on the usefulness of an acknowledgement of receipt of the application by competent authorities. Some respondents suggested clarifying the timeframe within which the notification will be provided. ESMA has amended the text to clarify that the acknowledgement shall be sent by the relevant authority no later than 10 working days after receipt of the request.

**Relevant annexes:**

Draft RTS 1: Draft regulatory technical standards under Article 7(4) of MiFID II

Draft ITS 2: Draft implementing technical standards under Article 7(5) of MiFID II

## 2.2. Freedom to provide investment services and activities / Establishment of a branch

### Regulatory technical standards under Article 34(8) and 35(11) of MiFID II

#### Background/Mandate

##### Article 34(8) of MiFID II

*ESMA shall develop draft regulatory technical standards to specify the information to be notified in accordance with paragraphs 2, 4, 5 and 7.*

*ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.*

##### Article 35(11) of MiFID II

*ESMA shall develop draft regulatory technical standards to specify the information to be notified in accordance with paragraphs 2, 4, 7 and 10.*

*ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.*

#### Analysis following feedback from stakeholders

##### General

1. A few respondents stated that there is a lack of clarity as to which obligations of the draft RTS, and related ITS, apply to credit institutions. These respondents argued that in this respect some of the content of the draft RTS and ITS seems to go beyond the requirements of MiFID II. ESMA notes the comment received and has amended the draft RTS and ITS ensuring alignment with the scope set forth under Article 1(3) of MiFID II.

##### Information required under the exercise of the right of freedom to provide investment services and activities

2. Respondents were supportive of ESMA's proposals on the topic, which were largely based on the existing standards and forms contained in the CESR Protocol on MiFID Notifications. However, a few respondents noted that the requirement to specify the financial instruments to which the passporting request applies, does not derive from Article 34 of MiFID II and the provision of information on the ever-changing variety of financial instruments provided would be very cumbersome and not appropriate from both

the investment firm's and the NCA's view. ESMA notes that the practice to specify the financial instruments to which the passporting request applies, has been already in the context of MiFID I and has not raised any specific issue so far.

*Information required on the notification for the provision of arrangements to facilitate access to an MTF or OTF*

3. A few respondents disagreed with the requirements on information required on the topic of MTFs and OTFs. ESMA notes that the information required is of high-level nature and in line with MiFID II requirements.

*Information to be notified in a branch passport notification*

4. Respondents were supportive of ESMA's proposals on the topic. No significant amendments were therefore made to the consulted text.

*Information to be notified for tied agents under the right of establishment*

5. ESMA received a very limited amount of responses on the topic. Respondents supported the proposals and suggested that it would be beneficial for the applicant to provide an indication of the public register where the tied agent is registered, if such a register exists. ESMA agrees and has amended the text accordingly.

*Changes in the particulars of passport notifications*

6. No substantial issues were raised by respondents on ESMA's proposals on the topic. No significant amendments were therefore made to the consulted text.

## Implementing technical standards under Article 34(9) and 35(12) of MiFID II

### Background/Mandate

#### Article 34(9) of MiFID II

*ESMA shall develop draft implementing technical standards to establish standard forms, templates and procedures for the transmission of information in accordance with paragraphs 3, 4, 5 and 7.*

*ESMA shall submit those draft implementing technical standards to the Commission by 31 December 2016.*

#### Article 35(12) of MiFID II

*ESMA shall develop draft implementing technical standards to establish standard forms, templates and procedures for the transmission of information in accordance with paragraphs 3, 4, 7 and 10.*

*ESMA shall submit those draft regulatory technical standards to the Commission by 3 January 2016.*

### Analysis following feedback from stakeholders

#### Passport notification process

8. Respondents agreed with the common templates suggested by ESMA for the passport notifications and on the common procedures and templates to be followed when changes in the passport notifications occur. A few respondents however noted that competent authorities should interpret “pragmatically and reasonably” the requirement of having to submit “all reasonable information”.

#### Communication between competent authorities

9. Respondents agreed with the proposed means of transmission for the passporting information, but asked ESMA to clarify that the use of electronic versions forms in English should be considered acceptable. With regards to the use of electronic means for the transmission of documents, ESMA disagrees and notes that (i) application forms should be sent in the in the official languages, or in one of the official languages, used in the Home Member State; and (ii) while the ITS allow for the option to submit forms through electronic means (if accepted by the relevant competent authority), it would be extremely costly and complex to impose to all competent authorities the use of this means of communication.

10. Respondents also strongly supported the introduction of an acknowledgment of receipt of the branch passport notification by the Host Member State authority. ESMA notes these comments and has therefore confirmed the proposed text of the ITS on this aspect.

*Tied agent passport notification*

11. ESMA received a very limited amount of responses on the proposal that a separate passport notification should be submitted for each tied agent established in another Member State. While some respondents supported ESMA's suggested approach, some noted that it could be too onerous for firms. ESMA has confirmed its suggested approach on the topic, as it believes that benefits in terms of efficiency would outweigh any impact due to the slight increase in administrative work for firms applying for the passporting of services.

*Changes in the particulars of passport notification*

12. Respondents were supportive of ESMA's proposals on the topic. No significant amendments were therefore made to the consulted text.

**Relevant annexes:**

Draft RTS 3: Draft regulatory technical standards under Articles 34(8) and 35(11) of MiFID II

Draft ITS 4: Draft implementing technical standards under Article 34(9) and 35(12) of MiFID II

## 2.3. Provision of services and performance of activities by third-country firms following an equivalence decision (general provisions)

### Background/Mandate

#### Article 46(7) of MiFIR

*ESMA shall develop draft regulatory technical standards to specify the information that the applicant third-country firm shall provide to ESMA in its application for registration in accordance with paragraph 4 and the format of information to be provided in accordance with paragraph 5.*

*ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.*

#### Analysis following feedback from stakeholders

1. The answers received by ESMA on the draft regulatory technical standards to specify the information that the applicant third-country firm shall provide to ESMA in its application for registration, focused on the content of Article 1(k) of the draft RTS. Some respondents suggested deleting the requirement for a written declaration issued by the competent authority of the third country which formally states that the firm is subject to its effective supervision and enforcement and specifies which investment services, activities, and ancillary services it is authorised to provide in its home jurisdiction. These respondents stated that the process of obtaining such a statement could be arduous as third country authorities might be reluctant to issue such a statement. ESMA has amended the text of the technical standard in order to clarify that ESMA is not expecting firms to declare whether they are subject to an “effective” supervision, but only to provide a declaration from the relevant supervisory authority stating that the firm is authorised to provide investment services in its home jurisdiction and setting out the list of investment services that it is authorised to provide.
2. Another comment made by respondents was in relation to the proposed requirement for firms to inform ESMA, within 30 days, of any change of the information provided. Some respondents suggested that firms should not be required to submit changes relating to Article 1(1)(i) and 1(1)(j). ESMA agrees and has amended the RTS accordingly.
3. Finally, with regards to ESMA’s proposal on the format of the information to be provided under Article 46(5) of MiFIR, a respondent suggested replacing the wording “readable size” with “sufficiently prominent”. ESMA notes that the requirement to provide information to clients “in a way that is easy to read, using characters of readable size” is identical to the one included in the recently approved Regulation on key information

documents for packaged retail and insurance-based investment products (PRIIPs)<sup>3</sup>. ESMA has therefore chosen not to amend the proposed text as it considers it sufficiently clear and aligned with other legislation on disclosure.

**Relevant annexes:**

Draft RTS 5: Draft regulatory technical standards under Article 46(7) of MiFIR

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<sup>3</sup> Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014.

## 2.4. Cooperation between competent authorities

### Background/Mandate

#### Article 80(3) of MiFID II

*ESMA shall develop draft regulatory technical standards to specify the information to be exchanged between competent authorities when cooperating in supervisory activities, on-the-spot-verifications, and investigations.*

*ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.*

### Analysis

1. Recital 153 of MiFID II states that *“It is necessary to reinforce provisions on exchange of information between national competent authorities and to strengthen the duties of assistance and cooperation which they owe to each other. Due to increasing cross-border activity, competent authorities should provide each other with the relevant information for the exercise of their functions, so as to ensure the effective enforcement of this Directive, including in situations where infringements or suspected infringements may be of concern to authorities in two or more Member States. In the exchange of information, strict professional secrecy is needed to ensure the smooth transmission of that information and the protection of particular rights.”*
2. With this objective, Article 80 of MiFID II sets out a framework for cooperation between competent authorities of the EU for supervisory activities, on-site (or on the spot) verifications or investigations.
3. Article 80(3) of MiFID II mandates ESMA to develop draft regulatory technical standards to specify the information to be exchanged between competent authorities when cooperating in supervisory activities, on-the-spot-verifications, and investigations.
4. ESMA has drafted these technical standards believing that the information to be exchanged should be of a sufficient scope and nature to allow competent authorities to discharge their supervisory duties and functions effectively.
5. On this same topic, ESMA is also mandate to draft ITS drafted under Article 80(4) of MiFID II and 81(4) on:
  - i. standard forms, templates, and procedures for competent authorities to cooperate in supervisory activities, on-site-verification and investigations; and

- ii. standard forms, templates and procedures for the exchange of information between competent authorities.
6. These ITSs, which ESMA is required to submit to the Commission by 3 January 2016, will cover the general principles and procedures for forms, templates and procedures to be used by authorities when sending and processing of (a) requests for assistance; (b) acknowledgements of receipt; and (c) replies to requests for assistance. These forms, templates and procedures will generally form part of any cooperation arrangements between authorities to facilitate the exchange of information.

**Relevant annexes:**

Draft RTS 6: Draft regulatory technical standards under Article 80(3) of MiFID II

### **3. Draft technical standards**

#### **RTS 1: Draft regulatory technical standards under Article 7(4) of MiFID II**

**COMMISSION DELEGATED REGULATION (EU) .../..**

**of [...]**

**supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on information and requirements for the authorisation of investment firms**

**(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<sup>1</sup> and amending Directive 2002/92/EC and Directive 2011/61/EU, and in particular Article 7(4) thereof,

Whereas:

- (1) In order to enable competent authorities to carry out a thorough assessment as part of the process for granting and refusing requests for authorisation of investment firms, an applicant should be required to submit to the competent authority precise information at the time of the initial request for authorisation. The competent authority should retain the right to request additional information from the applicant during the assessment process in accordance with the criteria and timelines set out in Directive 2014/65/EU.
- (2) In order to ensure that the competent authority's assessment is based on accurate information, it is essential that an applicant provide copies of its corporate documents, including a certified copy of the instrument of incorporation, by-laws and the articles of association and a copy of registration of the company in the national register of companies.
- (3) Information on the sources of capital available, including the means used for transferring financial resources when raising capital, should be submitted by an

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<sup>1</sup> OJ L 173, 12.5.2014, p.349.

applicant in order to enable competent authorities to assess that all relevant requirements in the field of financial crime have been complied with.

- (4) Newly established entities, when submitting an application, may only be in a position to provide information on how capital will be raised and the types and amount of capital that will be raised. However, evidence of paid-up share capital and other types of capital raised, together with information on the sources of capital, should be provided to the competent authorities, in view of obtaining authorisation, before authorisation is granted. Such evidence may include copies of relevant capital instruments and corresponding bank statements.
- (5) In order to enable competent authorities to assess the reputation of any person who will direct the business of the investment firm, of the proposed shareholders and members with qualifying holdings it is important to require an applicant to provide information on these persons.
- (6) In order to assess the experience of any person who will direct the business of the investment firm, competent authorities should be presented by an applicant with information on the relevant education and professional training, and professional experience of the members of the management body and persons effectively directing the business and their related powers and any proxies.
- (7) Financial information concerning the investment firm should be submitted by an applicant to the competent authorities so that these may assess the financial soundness of that investment firm.
- (8) Since, at time of the application, newly established firms might not be in the position to provide information on the auditors, those applicants should be exempted from providing this information to the competent authority unless the auditors have already been appointed.
- (9) Information relevant to the assessment of the organisational structure of the investment firm should include details on the internal control system, on the measures to detect conflicts of interests, and on client assets safeguarding arrangements, in order to allow the competent authority to assess whether that investment firm will be able to comply with its obligations under Article 16 of Directive 2014/65/EU.
- (10) In order to provide legal certainty, clarity and predictability with regards to the authorisation process, it is appropriate that the criteria against which competent authorities appraise the suitability of the shareholders or members with qualifying holdings, when authorising an investment firm, are the same criteria set out by Article 13 of Directive 2014/65/EU for the assessment of a proposed acquisition. In particular competent authorities should appraise the suitability of the shareholders or members with qualifying holdings and the financial soundness of the firm, against all of the

following criteria: the reputation and experience of any person who will direct the business of the investment firm; the financial soundness of the firm shareholders and members with qualifying holdings; whether the investment firm will be able to comply with the prudential requirements based on this Directive and on other Directives, in particular, on Directives 2002/87/EC of the European Parliament and of the Council<sup>2</sup> and 2013/36/EU; whether there are reasonable grounds to suspect that money laundering or terrorist financing within the meaning of Article 1 of Directive 2005/60/EC of the European Parliament and of the Council<sup>3</sup> is being or has been committed or attempted, or that the authorisation of the investment firm could increase the risk thereof.

- (11) In order to identify obstacles that could prevent effective exercise of the supervisory functions, competent authorities should consider the complexity and transparency of group structure of investment firm, the geographical location of the entities of the group and the activities the group entities perform.
- (12) Directive 95/46/EC of the European Parliament and of the Council<sup>4</sup> applies to the processing of personal data by the Member States in the application of this Regulation.
- (13) The application of this Regulation shall be deferred in order to align its date of application with the date prescribed for the application of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 in Article 93(2) of said Directive.
- (14) This Regulation is based on the draft regulatory technical standards submitted by European Securities and Markets Authority (ESMA) to the Commission.
- (15) In accordance with Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>5</sup>, ESMA has conducted open public consultations, 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:

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<sup>2</sup> Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council (OJ L 35, 11.2.2003, p. 1).

<sup>3</sup> Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of financial system for the purpose of money laundering and terrorist financing (OJ L 309, 25.11.2005, p. 15).

<sup>4</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

<sup>5</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

## Article 1 General information

An applicant seeking authorisation as an investment firm in accordance to Title II of Directive 2014/65/EU shall submit to the competent authority an application that includes the following general information:

- (a) its name (including its legal name and any other trading name to be used); legal structure (including information on whether it will be a legal person or, where allowed by national legislation, a natural person), address of the head office and, for existing companies, registered office; contact details; its national identification number, where available; and:
  - (i) for domestic branches: information on where the branches will operate;
  - (ii) for domestic tied agents: details on its intention to use tied agents.
- (b) List of investment services and activities, ancillary services and financial instruments to be provided, and whether clients' financial instruments and funds will be held (even on a temporary basis).
- (c) Copies of corporate documents and evidence of registration with the national register of companies, where applicable.

## Article 2 Information on capital

An applicant seeking authorisation as an investment firm in accordance to Title II of Directive 2014/65/EU shall provide to the competent authority information and, where available, evidence on the sources of capital available to it. The information shall include:

- (a) details on the use of private financial resources including the origin and availability of those funds;
  - (b) details on access to capital sources and financial markets including details of financial instruments issued or to be issued. Information on types of capital raised shall refer, where relevant, to the types of capital specified under Regulation (EU) No 575/20136, specifically whether the capital comprises Common Equity Tier 1 items, Additional Tier 1 items or Tier 2 items;
  - (c) any relevant agreements and contracts regarding the capital raised;
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- (d) information on the use or expected use of borrowed funds including the name of relevant lenders and details of the facilities granted or expected to be granted, including maturities, terms, pledges and guarantees, along with information on the origin of the borrowed funds (or funds expected to be borrowed) where the lender is not a supervised financial institution; and
- (e) details on the means of transferring financial resources to the firm including the network used to transfer such funds.

### Article 3

#### **Information on shareholders**

An applicant seeking authorisation as an investment firm in accordance to Title II of Directive 2014/65/EU shall provide to the competent authority the following information on its shareholders:

- (a) the list of persons with a direct or indirect qualifying holding in the investment firm, and the amount of these holdings. For indirect holdings, the name of the person through which the stake is held and the name of the final holder;
- (b) for persons with a qualifying holding (direct or indirect) in the investment firm the documentation required from proposed acquirers for the acquisition and increases in qualifying holdings in investment firms in accordance with Articles 3, 4 and 5 of *[RTS under Article 12(8) of MiFID II]*. Where the holder of a qualifying holding is not a natural person, the documentation shall also relate to all members of the management body and the general manager, or any other person performing equivalent duties;
- (c) for corporate shareholders that are members of a group, an organisational chart of the group indicating the main activities of each firm within the group, identification of any regulated entities within the group and the names of the relevant supervisory authorities as well as the relationship between the financial entities of the group and other non-financial group entities.

### Article 4

#### **Information on the management body and persons who direct the business**

An applicant seeking authorisation as an investment firm in accordance to Title II of Directive 2014/65/EU shall provide to the competent authority the following information:

- (a) In respect of members of the management body and persons effectively directing the business and their related powers and any proxies :
  - (i) personal details comprising the person's name, date and place of birth, personal national identification number, where available, address and contact details;

- (ii) the position for which the person is/will be appointed;
- (iii) a curriculum vitae stating relevant education and professional training, professional experience, including the names of all organisations for which the person has worked and nature and duration of the functions performed, in particular for any activities within the scope of the position sought. For positions held in the previous 10 years, when describing those activities, details shall be included on all delegated powers and internal decision-making powers held and the areas of operations under control;
- (iv) documentation relating to person's reputation and experience, in particular a list of reference persons including contact information, letters of recommendation;
- (v) criminal records and information on criminal investigations and proceedings relevant civil and administrative cases, and disciplinary actions opened against them (including disqualification as a company director, bankruptcy, insolvency and similar procedures), notably through an official certificate (if and so far as it is available from the relevant Member State or third country), or through another equivalent document. For ongoing investigations information could be provided through a declaration of honour;
- (vi) information on refusal of registration, authorisation, membership or licence to carry out a trade, business or profession; or the withdrawal, revocation or termination of such a registration, authorisation, membership or licence; or expulsion by a regulatory or government body or by a professional body or association;
- (vii) information on dismissal from employment or a position of trust, fiduciary relationship, or similar situation;
- (viii) information on whether an assessment of reputation and experience as an acquirer or as a person who directs the business has already been conducted (including the date of the assessment, the identity of that authority and evidence of the outcome of this assessment);
- (ix) description of any financial and non-financial interests or relationships of the person and his/her close relatives to members of the management body and key function holders in the same institution, the parent institution and subsidiaries and shareholders;
- (x) details of the result of any assessment of the suitability of the members of the management body, performed by the applicant itself;

- (xi) information on the minimum time that will be devoted to the performance of the person's functions within the firm (annual and monthly indications);
- (xii) information on human and financial resources devoted to the induction and training of the members (annual indications); and
- (xiii) the list of executive and non-executive directorships currently held by the person.

With regard to point (ix), financial interests may include interests such as credit operations, guarantees and pledge, and non-financial interests may include interests such as family or close relationships.

- (b) the headcount of the internal management and control bodies.

#### Article 5 **Financial information**

An applicant seeking authorisation as an investment firm in accordance to Title II of Directive 2014/65/EU shall provide to the competent authority the following information on its financial situation:

- (a) forecast information at an individual and, where applicable, at consolidated group and sub-consolidated levels, including:
  - (i) forecast accounting plans for the first three business years including :
    - forecast balance sheets;
    - forecast profit and loss accounts or income statements; and
  - (ii) planning assumptions for the above forecasts as well as explanations of the figures (i.e. expected number and type of customers, expected volume of transactions/orders, expected assets under management); and
  - (iii) where applicable, forecast calculations of the firm's capital requirements and liquidity requirements under the CRR and forecast solvency ratio for the first year.
- (b) in addition, for companies that are already active, statutory financial statements, at an individual and, where applicable, at consolidated group and sub-consolidated levels for the last three financial periods, approved, where the financial statements are audited, by the external auditor, including:
  - (i) the balance sheet;

- (ii) the profit and loss accounts or income statements; and
  - (iii) the annual reports and financial annexes and any other documents registered with the relevant registry or authority in the particular territory relevant to the company financial statements and, where applicable, a report by the company's auditor of the last three years or since the beginning of the activity.
- (c) an analysis of the scope of consolidated supervision under Regulation (EU) No 575/2013 of the European Parliament and of the Council<sup>7</sup>, including details on which group entities will be included in the scope of consolidated supervision requirements post-authorisation and at which level within the group these requirements will apply on a full or sub-consolidated basis.

#### Article 6

#### **Information on the organisation of the firm**

An applicant seeking authorisation as an investment firm in accordance to Title II of Directive 2014/65/EU shall provide to the competent authority the following information on its organisation:

- (a) a programme of initial operations for the following three years, including information on planned regulated and unregulated activities detailed information on the geographical distribution and activities to be carried out by the investment firm. Relevant information in the programme of operations shall include:
  - (i) the domicile of prospective customers/targeted investors;
  - (ii) the marketing and promotional activity and arrangements, including languages of the offering and promotional documents; identification of the Member States where advertisements are most visible and frequent; type of promotional documents (in order to assess where effective marketing will be mostly developed); and
  - (iii) the identity of direct marketers, financial investment advisers and distributors, geographical localisation of their activity;
- (b) details of the firm's auditors, when available at time of application for authorisation;
- (c) the organisational structure and internal control systems of the company, comprising:

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<sup>7</sup> Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

- (i) the personal details of the heads of internal functions (management and supervisory), including a detailed curriculum vitae, stating relevant education and professional training, professional experience;
  - (ii) the description of the resources (in particular human and technical) allocated to the various planned activities;
  - (iii) in relation to holding client financial instruments and funds, information, specifying any client asset safeguarding arrangements (in particular, where financial instruments and funds are held in a custodian, the name of the custodian, and related contracts); and
  - (iv) an explanation of how the firm will satisfy its prudential and conduct requirements.
- (d) information on the status of the application undertaken by the investment firm to become a member of the investor compensation scheme of the Home Member State or evidence of membership to the investor compensation scheme, where available;
- (e) a list of the outsourced functions, services or activities (or those intended to be outsourced) and a list of the contracts concluded or foreseen with external providers and resources (in particular, human and technical, and the internal control system) allocated to the control of the outsourced functions, services or activities;
- (f) measures to identify and to prevent or manage conflicts of interest that arise in the course of providing investment and ancillary services and a description of product governance arrangements;
- (g) a description of systems for monitoring the activities of the firm, including back-up systems, where available, and systems and risk controls where the firm wishes to engage in algorithmic trading and/or provide direct electronic access;
- (h) information on the compliance, internal control, and, risk management systems (a monitoring system, internal audits and the advice and assistance functions).
- (i) details on the systems for assessing and managing the risks of money laundering and terrorist financing;
- (j) business continuity plans, including systems and human resources (key personnel);
- (k) record management, record-keeping and record retention policies; and
- (l) a description of the firm's manual of procedures.

## **General requirements**

1. The information to be provided to the competent authority of the home Member State, as set out in Articles 1 and 6, shall refer to both the head office of the firm and its branches and tied agents.
2. The information to be provided to the competent authority of the home Member State, as set out in Articles 2-5, shall refer to the head office of the firm.

### Article 8

#### **Requirements applicable to the management of investment firms that are natural persons or investment firms that are legal persons managed by a single natural person**

1. The competent authority shall only authorise as investment firm an applicant natural person or a legal person managed by a single natural person where:
  - (a) the natural person is easily contactable at short notice by the competent authorities;
  - (b) the natural person has sufficient time dedicated to this function;
  - (c) the governing bodies or bylaws of the investment firm empower a person to substitute the manager immediately and perform all his duties if the latter is unable to perform them; and
  - (d) the person empowered pursuant to the previous point shall be of sufficiently good repute and have sufficient experience to substitute the manager for the time of absence, or until a new manager is appointed, so as to ensure sound and prudent management of the investment firm. The person empowered for investment firms that are natural persons, shall be also available to assist insolvency practitioners and relevant authorities in the liquidation of the firm. This person shall have the necessary availability for this function.
2. As part of its authorisation process, an applicant investment firm which is a natural person, or a legal person managed by a single natural person, shall provide to the competent authority the information listed in Article 4(1)(a), 4(1)(c), 4(1)(d), 4(1)(e) and 4(1)(f) in relation to the person empowered under paragraph 1(d).

### Article 9

#### **Requirements applicable to shareholders and members with qualifying holdings**

The competent authority shall verify that the request of an applicant for authorisation as an investment firm, in accordance to Title II of Directive 2014/65/EU, offers sufficient guarantees for a sound and prudent management of the entity by assessing the suitability of proposed shareholders and members with qualifying holdings, having regard to the likely influence on

the investment firm of each proposed shareholder or member with qualifying holdings, against all of the following criteria:

- (a) the reputation and experience of any person who will direct the business of the investment firm;
- (b) the reputation of the proposed shareholders and members with qualifying holdings;
- (c) the financial soundness of the proposed shareholders and members with qualifying holding, in particular in relation to the type of business pursued and envisaged in the investment firm;
- (d) whether the investment firm will be able to comply and continue to comply with the prudential requirements set out in Article 15 of Directive 2014/65/EU and, where applicable, Directives 2002/87/EC<sup>8</sup> and 2013/36/EU<sup>9</sup> of the European Parliament and of the Council, in particular, whether the group of which it will become a part has a structure that makes it possible to exercise effective supervision, effectively exchange information among the competent authorities and determine the allocation of responsibilities among the competent authorities; and
- (e) whether there are reasonable grounds to suspect that, in connection with the authorisation of the investment firm, money laundering or terrorist financing within the meaning of Article 1 of Directive 2005/60/EC of the European Parliament and of the Council<sup>10</sup> is being or has been committed or attempted, or that the authorisation of the investment firm could increase the risk thereof.

#### Article 10

##### **Effective exercise of supervisory functions**

A group structure, within which the investment firm will operate, that is complex and not sufficiently transparent, or has a geographical location of group entities, or includes activities performed by the group entities that may prevent the competent authority to effectively appraise the suitability of the shareholders or members with qualifying holdings or the influence of close links with the investment firm, shall be considered to be an obstacle to the exercise of the supervisory function of the competent authority for the purpose of Article 10(1) and (2) of Directive 2014/65/EU.

#### Article 11

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<sup>8</sup> Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council (OJ L 35, 11.2.2003, p. 1).

<sup>9</sup> 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).

<sup>10</sup> Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (OJ L 309, 25.11.2005, p. 15).



### **Entry into force**

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 3 January 2017.

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

Done at Brussels,

For the Commission

The President

On behalf of the President

[Position]

## **ITS 2: Draft implementing technical standards under Article 7(5) of Directive 2014/65/EC**

**COMMISSION IMPLEMENTING REGULATION (EU) .../...**

**of [...]**

**laying down implementing technical standards with regard to notifications by and to applicant and authorised investment firms according to 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<sup>1</sup> amending Directive 2002/92/EC and Directive 2011/61/EU, and in particular the third subparagraph of Article 7(5) thereof,

Whereas:

- (1) It is appropriate to set out common standard forms, templates and procedures to ensure a uniform mechanism by which Member States' competent authorities effectively exercise their powers in respect of the authorisation of firms for the provision of investment services, investment activities and, when relevant, of ancillary services.
- (2) To facilitate communication between an applicant seeking authorisation as an investment firm in accordance to Title II of Directive 2014/65/EU and the competent authority, competent authorities should designate a contact point specifically for the purpose of the application process and should publish the information on the contact point on their website.
- (3) Clear time limits should be defined for the submission of information on changes to the management body of the firm in order to allow competent authorities to assess whether those changes may pose a threat to the effective, sound and prudent management of the firm, and to adequately take into consideration of the interests of its clients and the integrity of the market.
- (4) Firms should be exempt from the requirement to submit information on changes to the management body before that change takes effect, if the change is due to factors

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<sup>1</sup> OJ L 173, 12.5.2014, p.349.

not within the control of the firm, such as in the case of the death of a management body member.

- (5) Directive 95/46/EC of the European Parliament and of the Council<sup>2</sup> applies to the processing of personal data by the Member States in the application of this Regulation.
- (6) The application of this Regulation shall be deferred in order to align its date of application with the date prescribed for the application of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 in Article 93(2) of said Directive.
- (7) This Regulation is based on the draft implementing technical standards submitted by ESMA to the Commission
- (8) ESMA has conducted open public consultations, 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<sup>3</sup>,

HAS ADOPTED THIS REGULATION:

#### Article 1

##### **Designated contact point**

Competent authorities shall designate a contact point for handling all information received from applicants seeking authorisation as an investment firm in accordance to Title II of Directive 2014/65/EU. Updated information on the contact point shall be made public on the competent authorities' websites.

#### Article 2

##### **Submission of the application**

1. An applicant seeking authorisation as an investment firm in accordance to Title II of Directive 2014/65/EU shall submit to the competent authority its application by filling in the template set out in Annex I.
2. The applicant shall notify the competent authority with information of all members of its management body by filling in the template set out in Annex II.
3. Each competent authority shall indicate on its website if duly filled in applications may be submitted in paper version, in electronic version or both.

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<sup>2</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

<sup>3</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

#### Article 3

##### **Receipt of the application form and acknowledgement of receipt**

Within 10 working days from the receipt of the application, the competent authority shall send in paper or by electronic means an acknowledgement of receipt to the applicant, including the contact details of the department or section or person within the competent authority.

#### Article 4

##### **Notification of changes to the membership of the management body**

1. An investment firm shall notify the competent authority in paper or by electronic means of any change to the membership of its management body before such change takes effect, or when this is materially impossible, within 10 working days after the change.
2. The investment firm shall provide information in accordance with the first paragraph in the format set out in Annex III.

#### Article 5

##### **Request of additional information**

When additional information is required to proceed with assessment of the application, the competent authority shall send a request to the applicant indicating the information to be provided, in paper or by electronic means.

#### Article 6

##### **Communication of the decision**

The competent authority shall inform the applicant of its decision to grant or not the authorisation in paper or by electronic means, within the six month period of Article 7(3) of Directive 2014/65/EU.

#### Article 7

##### **Entry into force**

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 3 January 2017.

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

Done at Brussels,

For the Commission



The President

On behalf of the President

[Position]



## Annex I

### Application Form for authorisation as an Investment Firm

	Reference number: .....
	Date: .....
 <b>FROM:</b>	
Name of the applicant:	
Address:	
 (Contact details of the designated contact person)	
Name:	
Telephone:	
Email:	
 <b>TO:</b>	
Member State:	
Competent Authority:	
Address:	
 (Contact details of the designated contact point)	
Address:	
Telephone:	

Email:

Dear [insert appropriate name]

In accordance with Article 2 of the Commission Implementing Regulation (EU) No .../... laying down implementing technical standards with regard to standard forms, templates and procedures for notification or provision of information provided for in Article 7(5) of Directive 2014/65/EU to ensure uniform conditions of application of Article 7(2), kindly find attached the authorisation application.

• Person in charge of preparing the application:

Name:

Status/position:

Telephone:

Fax (if available):

E-mail:

• Nature of the application (tick the relevant box):

Authorisation

Change to the authorisation already obtained

**CONTENT**

General information on the applicant firm

.....  
[please insert the information referred to under Articles 1 of [RTS]. Please set out that information here or make reference to the relevant annexes containing the information]

Information on the capital

.....  
[please insert the information referred to under Article 2 of [RTS]. Please set out that information here or make reference to the relevant annexes containing the information]

Information on the shareholders

.....  
[please insert the information referred to under Article 3 of [RTS]. Please set out that information here or make reference to the relevant annexes containing the information]

Information on the management body and persons directing the business

.....  
[please insert the information referred to under Article 4 of [RTS]. Please set out that information here or make reference to the relevant annexes containing the information]

Financial information

.....  
[please insert the information referred to under Article 5 of [RTS]. Please set out that information here or make reference to the relevant annexes containing the information]

Information on the organisation

.....  
[please insert the information referred to under Article 6 of [RTS]. Please set out that information here or make reference to the relevant annexes containing the information]

## Annex II

### List of members of the management body

	Reference number: .....
	Date: .....
FROM:	
Name of the applicant:	
Address:	
 (Contact details of the designated contact person)	
Name:	
Telephone:	
Email:	
 TO:	
Competent Authority:	
Address:	
 (Contact details of the designated contact point if relevant)	
Address:	
Telephone:	
Email:	

Dear [insert appropriate name]

In accordance with Article 2 of the Commission Implementing Regulation (EU) No .../... laying down implementing technical standards with regard to standard forms, templates and procedures for notification or provision of information provided for in Article 7(5) of Directive 2014/65/EU to ensure uniform conditions of application of Article 9(5), kindly find attached the notification request.



• Person in charge of preparing the application:

Name:

Status/position:

Telephone:

Fax (if available):

E-mail:

Date:

Signature:

**List of members of the management body**

**Member 1**

Name .....

Contact details (Telephone, email, address).....

Position.....

Professional experience and other relevant experience.....

Educational qualification and relevant training .....

List of executive and non-executive directorships in other entities.....

.....

Effective date .....

[Please set out that information here or provide an explanation of how it will be provided, or make reference to the relevant annexes containing the information]

**Member n**

Name .....

Contact details (Telephone, email, address).....

Position.....

Professional experience and other relevant experience.....

Educational qualification and relevant training .....

List of executive and non-executive directorships in other entities.....

.....  
Effective date .....

[Please set out that information here or provide an explanation of how it will be provided, or make reference to the relevant annexes containing the information]

Please provide:

- Minutes of the general meeting acting the nomination of the new member of the management body
- Minutes of the general meeting of the management body acting the nomination of the new members.

## Annex III

### Notification of information on changes to the membership of the management body

	Reference number: .....
	Date: .....
FROM:	
Name of the applicant:	
Address:	
(Contact details of the designated contact person)	
Name:	
Telephone:	
Email:	
TO:	
Competent Authority:	
Address:	
(Contact details of the designated contact point if relevant)	
Address:	
Telephone:	

Email:

Dear [insert appropriate name]

In accordance with Article 4 of the Commission Implementing Regulation (EU) No .../... laying down implementing technical standards with regard to standard forms, templates and procedures for notification or provision of information provided for in Article 7(5) of Directive 2014/65/EU to ensure uniform conditions of application of Article 9(5), kindly find attached the notification request.

• Person in charge of preparing the application:

Name:

Status/position:

Telephone:

Fax (if available):

E-mail:

**Information on member(s) leaving the management body**

**Member 1**

Name .....

Contact details (Telephone, email, address).....

Position.....

Effective date of departure from management body.....

Reasons for the departure from management body.....

**Member 2**

Name .....

Contact details (Telephone, email, address).....
Position.....
Effective date of departure from management body.....
Reasons for the departure from management body.....
<b>Member n</b>
Name .....
Contact details (Telephone, email, address).....
Position.....
Effective date of departure from management body.....
Reasons for the departure from management body.....

**Information on new member(s) of the management body**

**Member 1**

Name .....

Contact details (Telephone, email, address).....

Position.....

Professional experience and other relevant experience.....

Educational qualification and relevant training .....

List of executive and non-executive directorships in other entities.....

.....

Effective date .....

[Please set out that information here or provide an explanation of how it will be provided, or make reference to the relevant annexes containing the information]

**Member n**

Name .....

Contact details (Telephone, email, address).....

Position.....

Professional experience and other relevant experience.....

Educational qualification and relevant training .....

List of executive and non-executive directorships in other entities.....

.....

Effective date .....

[Please set out that information here or provide an explanation of how it will be provided, or make reference to the relevant annexes containing the information]

**Complete updated list of members of the management body**

Name	Position	Effective date

Please provide:

- Minutes of the general meeting acting the nomination of the new member of the management body.
- Minutes of the general meeting of the management body acting the nomination of the new member.

## **RTS 3: Draft regulatory technical standards under Articles 34(8) and 35(11) of MiFID II**

**COMMISSION DELEGATED REGULATION (EU) No .../..**

**of [...]**

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

**(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<sup>1</sup>, and in particular the third subparagraph of Articles 34(8) and the third subparagraph of Article 35(11) thereof,

Whereas:

- (1) It is important to specify the information that investment firms, market operators and, where foreseen, credit institutions should notify to the competent authorities of their home Member State in the event that they wish to provide investment services or perform investment activities as well as ancillary services in another Member State, in order to establish uniform information requirements and to benefit from the possibility to provide services throughout the Union.
- (2) For the same reasons, it is also important to clarify the information that investment firms or market operators, operating a multilateral trading facility ("MTF"), or an organised trading facility ("OTF"), should submit in the event that they wish to facilitate, within the territory of another Member State, access to and trading on those systems by remote users, members or participants established in that other Member State.
- (3) Competent authorities of home and host Member States should receive updated information in case of any change in the particulars of a passport notification, including

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<sup>1</sup> OJ L 173, 12.6.2014, p. 349.

any withdrawal or cancellation of the authorisation to provide investment services and activities. Such information should ensure those competent authorities are able to make an informed decision that is consistent with their powers and responsibilities.

- (4) Changes to the name, address and contact details of investment firms in the home Member State are to be considered relevant and should therefore be notified as a change of branch particulars notification or as a change of tied agent particulars notification.
- (5) It is important for competent authorities of the home and host Member State to cooperate in addressing the threat of money laundering. This Regulation, and in particular the communication of the investment firm's programme of operations, should facilitate the assessment and supervision by the competent authority of the host Member State of the adequacy of the systems and controls to prevent money laundering and terrorist financing of a branch established in its territory, including the skill, knowledge and good character of its money laundering reporting officer.
- (6) The provisions in this Regulation are closely linked, since they deal with notifications related to the exercise of the freedom to provide investment services and activities and the exercise of the right of establishment that apply to investment firms, market operators and, where foreseen, credit institutions. To ensure coherence between those provisions, which should enter into force at the same time, and to facilitate a comprehensive view and compact access to them by persons subject to those obligations, it is desirable to include the regulatory technical standards for notification of information required by Title II, Chapter III of Directive 2014/65/EU in a single Regulation.
- (7) The application of this Regulation shall be deferred in order to align its date of application with the date prescribed for the application of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 in Article 93(2) of said Directive.
- (8) This Regulation is based on the draft regulatory technical standards submitted by ESMA to the Commission.
- (9) In accordance with Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>2</sup>, the European Securities and Markets Authority (ESMA) has conducted open public consultations on such draft regulatory 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.

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<sup>2</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

HAS ADOPTED THIS REGULATION:

#### Article 1

##### **Scope**

1. This Regulation shall apply to investment firms and market operators operating an MTF or an OTF.
2. This Regulation shall also apply to credit institutions, authorised under Directive 2013/36/EU of the European Parliament and of the Council , 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.
- (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.

#### 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;
- (b) a short description of the appropriate arrangements to be in place and the date from which these arrangements will be provided in the host Member State;

- (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.
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;
  - (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) 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 thirty-six 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 investment services and activities 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:
  - (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**

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 3 January 2017.

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

*Done at Brussels,*

*For the Commission*

*The President*

*On behalf of the President*

*[Position]*

## **ITS 4: Draft implementing technical standards under Articles 34(9) and 35(12) of MiFID II**

**COMMISSION IMPLEMENTING REGULATION (EU) No .../..**

**of [...]**

**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**

**(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 instrument amending Directive 2002/92/EC and Directive 2011/61/EU<sup>1</sup>, 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 foreseen, credit institutions wish to provide investment services and perform activities in another Member State under the right of freedom to provide services or under the right of establishment. The provisions in this Regulation are closely linked, since they deal with the transmission of information related to the exercise of the freedom to provide investment services and activities and of the right of establishment. To ensure coherence between those provisions, which should enter into force at the same time, and to facilitate a comprehensive view and compact access to them by persons subject to those obligations, it is desirable to include certain implementing technical standards required by Directive 2014/65/EU in a single Regulation.
- (2) The provisions in this Regulation shall also apply to credit institutions authorised under Directive 2013/36/EU of the European Parliament and of the Council<sup>2</sup>.
- (3) It is important to establish standard forms covering the language and means of communication of passport notifications which can be used by investment firms, market operators, and, where foreseen, credit institutions, and the competent authorities of

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<sup>1</sup> OJ L 173, 12.6.2014, p. 349.

<sup>2</sup> 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).

home and host Member States in order to facilitate the unhindered exercise of the provision of investment services and activities across Member States and the efficiency of the performance of the respective tasks and responsibilities of the competent authorities.

- (4) The assessment of the accuracy and completeness of the submitted notification from the competent authority of the home Member State is necessary in order to clarify the responsibilities of the respective authority, and to ensure the quality of the submitted information both from the investment firm, market operator, or, where foreseen, credit institution to the competent authority of the home Member State, and from 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 the respects in which the notification is assessed to be incomplete or incorrect are necessary to ensure clarity in the identification and communication of the missing or incorrect elements and to facilitate the process of addressing these 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 of the date of receipt of the relevant notification and regarding 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 shall be used when an investment firm or a market operator, operating a multilateral trading facility (MTF) or organised trading facility (OTF), 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 the submitted information both from the investment firm or market operator to the competent authority of the home Member State and from the competent authority of the home Member State to the competent authority of the host Member State.
- (8) The application of this Regulation shall be deferred in order to align its date of application with the date prescribed for the application of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 in Article 93(2) of said Directive.
- (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<sup>3</sup>, 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 an MTF or an OTF.
2. This Regulation shall also apply to credit institutions authorised under Directive 2013/36/EU and 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:

- (e) “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;
- (f) “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;
- (g) “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.

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<sup>3</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

- (h) “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

#### **General requirements**

1. Any notification or communication submitted under this Regulation:
  - (a) shall be provided in any European Union language accepted by both the competent authority of the home Member State and by the competent authority of the host Member State;
  - (b) shall be submitted in paper form, or by electronic means, if accepted by the relevant competent authority;
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 4

#### **Submission of the investment services and activities passport notification**

1. The investment firm shall submit to the competent authority of the home Member State an investment services and activities passport notification by completing the form set out in Annex I.
2. The investment firm shall submit a separate investment services and activities passport notification to the competent authority of the home Member State for each Member State into which the investment firm intends to operate.
3. An investment firm and such credit institutions as are referred to in Article 1(2)(a) wishing to provide investment services or activities through a tied agent established in its home Member State shall submit an investment services and activities passport notification to the competent authority of its home Member State, by completing the form set out in Annex I and completing only those parts relevant to the tied agent.

### Article 5

#### **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 4, the competent authority of the home Member State shall assess the completeness and accuracy of the information provided.

2. The competent authority of the home Member State shall inform the investment firm or such credit institutions as are referred to in Article 1(2)(a) without undue delay, if the information provided is assessed to be incomplete or incorrect, indicating in which particulars respect the information has been assessed to be incomplete or incorrect.
3. The one month period referred to in paragraphs 3 and 5 of Article 34 of Directive 2014/65/EU shall begin only upon receipt of the notification containing information that is assessed to be complete and correct.

#### Article 6

##### **Communication of the investment services and activities passport notification**

1. The competent authority of the home Member State shall, within one month of receiving the investment services and activities passport notification, communicate it to the competent authority of the host Member State, by completing the form set out in Annex II, together with a copy of the investment services and activities passport notification received from the investment firm or credit institution.
2. The competent authority of the home Member State shall inform, without undue delay, the investment firm or credit institution about the onward communication of the investment services and activities passport notification to the competent authority of the host Member State, including the date of submission.

#### Article 7

##### **Submission of the change of investment services and activities particulars notification**

1. In the event of any change in any of the particulars of an investment services and activities passport notification, the investment firm and such credit institutions as are referred to in Article 1(2)(a) shall submit a notification to the competent authority of the home Member State by completing the form set out in Annex I.
2. The investment firm or credit institution 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. When communicating changes related to the investment services, activities, ancillary services or financial instruments provided, the investment firm or credit institution shall list all the investment services, activities, ancillary services or financial instruments that currently it provides or intends to provide in the future.

#### Article 8

##### **Communication of the change of investment services and activities particulars notification**

1. The competent authority of the home Member State shall communicate, without undue delay, the changes in the particulars of the investment services and activities passport

notification to the competent authority of the host Member State, by completing the form set out in Annex III, together with a copy of the notification received from the investment firm or credit institution referred to in Article 7(1).

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 where the investment firm exercised the right to freely provide investment services or activities of that withdrawal or cancellation, by completing the form set out in Annex III.

#### Article 9

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

An investment firm or the 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 this Member State, shall submit to the competent authority of its home Member State, the details of the host Member State in which it intends to provide such arrangements, by completing the form set out in Annex IV.

#### Article 10

### **Communication of 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 one month of receiving the notification pursuant to Article 9, communicate it to the competent authority of the host Member State, by completing the form set out in Annex V, together with a copy of the notification received from the investment firm or market operator operating an MTF or an OTF referred to in Article 9.
2. The competent authority of the home Member State shall inform, without undue delay, the investment firm or the market operator operating an MTF or an OTF about the onward communication of the notification to the competent authority of the host Member State including the date of the submission.

#### Article 11

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

1. For any changes to the particulars of the 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 by completing the form set out in Annex IV.

2. The investment firm or the market operator operating an MTF or an OTF shall complete only those parts 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 12

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

The competent authority of the home Member State shall communicate, without undue delay, the changes in the particulars of the notification for the provision of arrangements to facilitate access to an MTF or an OTF to the competent authority of the host Member State, by completing the form set out in Annex III, together with a copy of the notification received from the investment firm or market operator referred to Article 11(1).

#### Article 13

### **Submission of the branch passport notification**

1. An investment firm which intends to establish a branch within the territory of another Member State shall submit to the competent authority of the home Member State the information as required by Article 35(2) of Directive 2014/65/EU, by completing the form set out in Annex VI.
2. An investment firm that intends to establish a branch which in turn intends to use tied agents in accordance with Article 35(2)(c) of Directive 2014/65/EU, shall also submit to the competent authority of the home Member State a separate tied agent passport notification in respect of each tied agent by completing the form set out in Annex VII.

#### Article 14

### **Submission of the tied agent passport notification**

1. An investment firm and such credit institutions as are referred to in Article 1(2)(b) wishing to use a tied agent established in another Member State shall submit to the competent authority of its home Member State the information in accordance with Article 35(2) of Directive 2014/65/EU, by completing the form set out in Annex VII.
2. An investment firm or credit institution that intends to use tied agents in another Member State shall completing a separate notification in respect of each tied agent it intends to use.

#### Article 15

### **Assessment of completeness and accuracy of the branch passport notification or tied agent passport notification**

1. Upon receipt of a notification pursuant to Article 13 or Article 14, the competent authority of the home Member State shall assess the completeness and accuracy of the information provided.

2. The competent authority of the home Member State shall inform the investment firm, or such credit institutions as are referred to in Article 1(2)(b), without undue delay, if the information provided is assessed to be incomplete or incorrect, indicating where information has been assessed to be incomplete or incorrect.
3. The three month period provided in Article 35(3) and Article 35(7) of Directive 2014/65/EU shall begin only upon receipt of the notification containing information that is assessed to be complete and correct.

#### Article 16

##### **Communication of the branch passport notification**

1. The competent authority of the home Member State shall within three months of receiving the branch passport notification, forward it to the competent authority of the host Member State, by completing the form set out in Annex VIII, together with a copy of the branch passport notification received from the investment firm referred to in Article 13.
2. The competent authority of the home Member State shall inform, without undue delay, the investment firm about the communication of the branch passport notification to the competent authority of the host Member State, including the date of submission.
3. The competent authority of the host Member State shall acknowledge receipt of the notification both to the competent authority of the home Member State and the investment firm.

#### Article 17

##### **Communication of the tied agent passport notification**

1. The competent authority of the home Member State shall, within three months of receiving the tied agent passport notification, forward it to the competent authority of the host Member State, by completing the form set out in Annex IX, together with a copy of the tied agent passport notification received from the investment firm or such credit institutions as are referred to in Article 1(2)(b), referred to in Article 14.
2. The competent authority of the home Member State shall inform, without undue delay, the investment firm or credit institution about the communication of the tied agent passport notification to the competent authority of the host Member State, including the date of submission.
3. The competent authority of the host Member State shall acknowledge receipt of the notification both to the competent authority of the home Member State and the investment firm or credit institution.
4. The tied agent shall only commence its proposed investment services or activities on receipt of a communication from the competent authority of the host Member State, or

failing such communication at the latest after two months from the date of transmission of the communication by the competent authority of the home Member State, as referred to in paragraph 2. In both cases, the tied agent shall commence its proposed investment services or activities only once it has been registered in the public register in the Member State where they are established in accordance with Article 29(3) of Directive 2014/65/EU.

#### Article 18

##### **Submission of the change of branch particulars notification**

1. In the event of a change in the particulars of a branch passport notification, the investment firm shall submit to the competent authority of the home Member State a notification by completing the form set out in Annex VI.
2. The investment firm or credit institution shall complete only those parts of the form set out in Annex VI relevant to the changes in the particulars of the branch passport notification.
3. When the investment firm or credit institution intends to make changes to the investment services, activities, ancillary services or financial instruments provided through tied agents, then it shall list all in the form set out in Annex VI the investment services, activities, ancillary services or financial instruments that it currently provides or intends to provide through tied agents in the future.
4. Changes to the particulars of a branch passport notification concerning the termination of the operation of the branch shall be notified, by completing the form set out in Annex X.

#### Article 19

##### **Submission of the change of the tied agent particulars notification**

1. In the event of any changes in the particulars of a tied agent passport notification, the investment firm or such credit institutions as are referred to in Article 1(2)(b) shall submit to the competent authority of the home Member State a notification, by completing the form set out in Annex VII.
2. A firm shall only complete those parts of the tied agent passport notification under the right of establishment relevant to the changes in the particulars of the tied agent passport notification.
3. When the investment firm intends to make changes to the investment services, activities, or financial instruments, then it shall list in the form set out in Annex VI all the investment services, activities, or financial instruments that currently provides or intends to provide in the future.

4. Changes to the particulars of a tied agent passport notification concerning the cessation of the use of a tied agent established in another Member State shall be notified, by completing the form set out in Annex X.

#### Article 20

##### **Communication of the change of branch particulars notification**

1. The competent authority of the home Member State shall communicate, without undue delay, the changes in the particulars of the branch passport notification to the competent authority of the host Member State, by completing the form set out in Annex XI, together with a copy of the notification received from the investment firm referred to in Article 18(1).
2. The competent authority of the home Member State shall communicate, without undue delay, the changes in the particulars of the branch passport notification concerning the termination of the operation of the branch to the competent authority of the host Member State, by completing the form set out in Annex XIII, together with a copy of the notification on the termination of the operation of the branch received from the investment firm referred to in Article 18(4).

#### Article 21

##### **Communication of the change of tied agent particulars notification**

1. The competent authority of the home Member State shall communicate, without undue delay, the changes in the particulars of the tied agent passport notification to the competent authority of the host Member State, by completing the form set out in Annex XII, together with a copy of the notification received from the investment firm or such credit institutions as are referred to in Article 1(2)(b), referred to in Article 19(1).
2. The competent authority of the home Member State shall communicate, without undue delay, the changes in the particulars of the tied agent passport notification concerning the cessation of the use of a tied agent established in another Member State to the competent authority of the host Member State, by completing the form set out in Annex XIII, together with a copy of the notification on the cessation of the use of the tied agent received from the investment firm or credit institution referred to in Article 19(4).

#### Article 22

##### **Entry into force**

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 3 January 2017

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



Done at Brussels, For  
the Commission

The President

On behalf of the President

[Position]



## **Annex I: Format for the notification on the investment services and activities passport notification and change of investment services and activities particulars notification<sup>4</sup>**

[Articles 4 and 7 of Commission Implementing Regulation (EU) No .../...]

Reference number:.....

Date:.....

### **Part 1 – Contact Information**

Type of notification:

Investment services and activities passport notification/ change of investment services and activities particulars notification

Member State in which the investment firm/credit institution intends to operate:

Name of investment firm/credit institution:

Trading name

Address:

Telephone number:

E-mail:

Name of the contact person at the investment firm / credit institution:

Home Member State

Authorisation Status:

Authorised by [Home Member State Competent Authority]

Authorisation Date:

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<sup>4</sup> For change of investment services and activities particulars notification only the parts of the forms which contain new information shall be completed. If the intention is to make changes to the investment services, activities, ancillary services or financial instruments, please list all the investment services, activities, ancillary services or financial instruments the firm will provide.

**Part 2 – Programme of operations**

**Intended investment services, activities and ancillary services\***

		Investment Services and activities									Ancillary services						
		A1	A2	A3	A4	A5	A6	A7	A8	A9	B1	B2	B3	B4	B5	B6	B7
Financial Instruments	C1	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C2	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C3	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C4	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C5	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C6	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C7	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C8	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C9	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C10	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C11	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

\*Please place an (x) in the appropriate boxes.

**Details of Tied Agent located in the home Member State\***

Name of tied agent	Address	Telephone	E-mail	Contact

\*Please provide separate matrixes with the intended investment services for each tied agent the investment firm intends to use.

**Intended investment services to be provided by the tied agent\*:**

	Investment services and activities										Ancillary services						
		A1	A2	A3	A4	A5	A6	A7	A8	A9	B1	B2	B3	B4	B5	B6	B7
Financial Instruments	C1	<input type="checkbox"/>				<input type="checkbox"/>		<input type="checkbox"/>									
	C2	<input type="checkbox"/>				<input type="checkbox"/>		<input type="checkbox"/>									
	C3	<input type="checkbox"/>				<input type="checkbox"/>		<input type="checkbox"/>									
	C4	<input type="checkbox"/>				<input type="checkbox"/>		<input type="checkbox"/>									
	C5	<input type="checkbox"/>				<input type="checkbox"/>		<input type="checkbox"/>									
	C6	<input type="checkbox"/>				<input type="checkbox"/>		<input type="checkbox"/>									
	C7	<input type="checkbox"/>				<input type="checkbox"/>		<input type="checkbox"/>									
	C8	<input type="checkbox"/>				<input type="checkbox"/>		<input type="checkbox"/>									
	C9	<input type="checkbox"/>				<input type="checkbox"/>		<input type="checkbox"/>									
	C10	<input type="checkbox"/>				<input type="checkbox"/>		<input type="checkbox"/>									
	C11	<input type="checkbox"/>				<input type="checkbox"/>		<input type="checkbox"/>									

\* Please place an (x) in the appropriate boxes. If you intend to make changes to the investment services, activities or financial instruments provided by the tied agent, please list all investment services, activities or financial instruments the tied agent will provide.



## **Annex II: Form for the communication of the investment services and activities passport notification from the competent authority of the home Member State to the competent authority of the host Member State**

[Article 6 of Commission Implementing Regulation (EU) No .../...]

Reference number:.....

Date:.....

### **Notification in accordance with Article 34(3) of Directive 2014/65/EU\***

FROM:

Member State:

Competent authority of the home Member State:

Address:

Designated contact point:

Telephone number:

E-mail:

TO:

Member State:

Competent Authority of the host Member State:

Address:

Designated contact point:

Telephone number:

E-mail:

In accordance with Article 34(3) of the Directive 2014/65/EU, we wish to notify you that **[Name of firm]**, (1) an investment firm authorised by [name of the competent authority of the home Member State], intends to provide the investment services and / or investment activities as well as ancillary services listed in the attached passport notification for the first time in the exercise of the right of freedom to provide investment services or activities or (2) a credit institution authorised by [name of the competent authority of the home Member State] intends to provide, through the use of a tied agent, the investment services or activities listed in the attached passport notification for the first time, in the exercise of the right of freedom to provide investment services and activities.

If you have any queries, please do not hesitate to contact us.



Yours sincerely,

[Signature]

\* Please amend accordingly



**Annex III: Form for the communication of a change in the particulars of the investment services and activities passport notification or the notification for the provision of arrangements to facilitate access to an MTF or OTF from the competent authority of the home Member State to the competent authority of the host Member State**

[Articles 8 and 12 of Commission Implementing Regulation (EU) No .../...]

Reference number:.....

Date:.....

**Notification in accordance with Article 34(4) or Article 34(7) of the Directive 2014/65/EU\***

FROM:

Member State:

Competent authority of the home Member State:

Address:

Designated contact point:

Telephone number:

E-mail:

TO:

Member State:

Competent Authority of the host Member State:

Address:

Designated contact point:

Telephone number:

E-mail:

In accordance with Article 34(4) of the Directive 2014/65/EU, we wish to notify you that **[Name of firm]**, an investment firm / credit institution / market operator authorised / supervised by [name of the competent authority of the home Member State], has:

- (a) amended the investment services and activities/ancillary services/ financial instruments that intends to carry on in your territory on a cross – border basis

- (b) changed its name from [old name] to [new name] with effect [date of change]
- (c) moved to the following address with effect [date of change]
- (d) changed its other contact information to as follows [add any changes made to the contact information of Part 1 in Annex I] with effect [date of change]
- (e) engaged an additional in [name of the home Member State] registered tied agent in providing its investment services and activities in your territory on a cross-border basis
- (f) amended the arrangements provided in [name of the host Member State] in order to facilitate the access to and trading of the [name of the MTF or OTF]
- (g) ceased to provide investment services and / or perform investment activities due to the withdrawal / cancellation of its authorisation with effect [date of withdrawal / cancellation].

Please find attached a copy of the change of [investment services and activities particulars notification/particulars for the provision of arrangements to facilitate access to an MTF or OTF notification] with the relevant changes. If you have any queries, please do not hesitate to contact us.

Yours sincerely,

[Signature]

\* Please amend accordingly to the changes to be notified



## **Annex IV: Format for the notification for the provision of arrangements to facilitate access to an MTF or OTF**

[Articles 9 and 11 of Commission Implementing Regulation (EU) No .../...]

Reference number:.....

Date:.....

### **Part 1 – Contact Information:**

Type of notification: Provision of arrangements to facilitate access to an MTF / OTF / changes to the particulars of the notification for the provision of arrangements to facilitate access to an MTF / OTF

Member State(s) in which the investment firm/market operator intends to provide arrangements:

Name of investment firm/market operator:

Address:

Telephone number:

E-mail:

Name of the contact person at the investment firm / market operator:

Home Member State

Authorisation Status (of the investment firm)/Applicable Law (of the market operator): Authorised / Licensed /Supervised by [Home Member State Competent Authority]

Authorisation Date (for investment firms):

Name of the MTF / OTF:

Date from which the arrangements will be provided: With immediate effect

### **Part 2 – Description of [name of the MTF/OTF] business model:**

[The description shall include at least the following information]

Type of traded financial instruments:

[to be completed by investment firm / market operator]

Type of trading participants:

[to be completed by investment firm / market operator]

Type of appropriate arrangements:

[to be completed by investment firm / market operator]

Marketing:

[to be completed by investment firm / market operator]



**Annex V: Form for the communication notification for the provision of arrangements to facilitate access to an MTF or OTF from the competent authority of the home Member State to the competent authority of the host Member State**

[Article 10 of Commission Implementing Regulation (EU) No .../...]

Reference number:.....

Date:.....

**Notification in accordance with Article 34(7) of the Directive 2014/65/EU\***

FROM:

Member State:

Competent authority of the home Member State:

Address:

Designated contact point:

Telephone number:

E-mail:

TO:

Member State:

Competent Authority of the host Member State:

Address:

Designated contact point:

Telephone number:

E-mail:

In accordance with Article 34(7) of the Directive 2014/65/EU, we wish to notify you that the [name of the Market Operator/Investment Firm] which operates the [name of the MTF or OTF] under the [name of the applicable national law] in [name of the home Member State], intends to provide arrangements in [name of the Member State in which intends to provide arrangements] in order to facilitate access to and trading on [name of the MTF/OTF] by remote users, members or participants established in [name of the Member State in which intends to provide arrangements], according to the attached notification.



If you have any queries, do not hesitate to contact us.

Yours sincerely,

[Signature]

\*Please amend accordingly



## Annex VI: Format for the notification of the branch passport notification and change of branch particulars notification<sup>5</sup>

[Articles 13, 18 and 19 of Commission Implementing Regulation (EU) No .../...]

Reference number:.....

Date:.....

### Part 1 – Contact Information

Type of notification: Branch passport notification/ change of branch particulars notification

Member State in which the investment firm intends to establish a branch<sup>6</sup>:

Name of the investment firm:

Address of the investment firm:

Telephone number of the investment firm:

E-mail of the investment firm:

Name of the contact person at the investment firm :

Name of the branch:

Address of the branch:

Telephone number of the branch:

E-mail of the branch:

Name(s) of those responsible for the management of the branch:

---

<sup>5</sup> For changes of branch particulars notification please complete only the parts of the forms which contain new information. When the investment firm intends to make changes to the investment services, activities, ancillary services or financial instruments provided by the branch, the firm shall list all investment services, activities ancillary services or financial instruments the branch will provide.

<sup>6</sup> Please note that national corporate law may require the previous registration to a commercial registry prior to the commencement of operations by the branch.

Home Member State:

Authorisation Status:

Authorised by [Home Member State  
Competent Authority]

Authorisation Date:

**Part 2 – Programme of operations**

**Intended investment services, activities and ancillary services provided by the branch\***

	Investment Services and activities										Ancillary services						
		A1	A2	A3	A4	A5	A6	A7	A8	A9	B1	B2	B3	B4	B5	B6	B7
Financial Instruments	C1	<input type="checkbox"/>															
	C2	<input type="checkbox"/>															
	C3	<input type="checkbox"/>															
	C4	<input type="checkbox"/>															
	C5	<input type="checkbox"/>															
	C6	<input type="checkbox"/>															
	C7	<input type="checkbox"/>															
	C8	<input type="checkbox"/>															
	C9	<input type="checkbox"/>															
	C10	<input type="checkbox"/>															
	C11	<input type="checkbox"/>															

\* Please place an (x) in the appropriate boxes

**Business Plan and structural organisation of the branch**

Business plan

1. How will the branch contribute to the strategy of the firm/group?

2. What will the main functions of the branch be?

3. Describe the main objectives of the branch;

#### Commercial Strategy

1. Describe the types of clients/counterparties the branch will be dealing with;

2. Describe how the firm will obtain and deal with these clients;

#### Organisational structure

1. Briefly describe how the branch fits into the corporate structure of the firm/group? (This may be facilitated by attaching an organisational chart)

2. Set out the organisational structure of the branch, showing functional, geographical and legal reporting lines;

3. Who will be responsible for the branch operations on a day to day basis? Provide details of professional experience of the persons responsible for the management of the branch (Please attach CV);

4. Who will be responsible for the internal control functions at the branch?

5. Who will be responsible for dealing with complaints in relation to the branch?

6. How will the branch report to the head office?

7. Detail any critical outsourcing arrangements

#### Tied Agents<sup>7</sup>

1. Will the branch use tied agent?

2. What is the identity of the tied agent?

– Name

– Address

---

<sup>7</sup> The investment firm shall submit a separate passport notification in respect of each tied agent the branch intends to use.

- Telephone
- E-mail
- Contact point
- reference or hyperlink to the public register where the tied agent is registered

#### Systems & Controls

Provide a brief summary of arrangements for:

1. safeguarding client money and assets;
4. compliance with the conduct of business and other obligations that fall under the responsibility of the Competent Authority of the host Member State according to Art 35(8) and record keeping under Art 16(6);
5. staff code of Conduct, including personal account dealing;
6. anti-money laundering;
7. monitoring and control of critical outsourcing arrangements (if applicable);
8. details of the accredited compensation scheme of which the investment firm is a member;

#### Financial forecast

Attach a forecast statement for profit and loss and cash flow, both over an initial period of thirty six month period;



## **Annex VII: Format for the notification of the tied agent passport notification and change of tied agent particulars notification<sup>8</sup>**

[Articles 13, 14 and 19 of Commission Implementing Regulation (EU) No .../...]

**Reference number:**.....

**Date:**.....

### **Part 1 – Contact Information**

Type of notification: Tied agent passport notification / change of tied agent particulars notification

Member State in which the investment firm/credit institution intends to use a tied agent established in the host Member State(s):

Name of investment firm/credit institution:

Address of the investment firm/ credit institution:

Name of the contact person at the investment firm / credit institution:

Telephone number of the investment firm/ credit institution

E-mail of the investment firm /credit institution

Name of the tied agent:

Address of the tied agent:

Telephone number of the tied agent:

E-mail of the tied agent:

Name(s) of those responsible for the

---

<sup>8</sup> For change of tied agent particulars notification only the parts of the forms which contain new information shall be completed. When changes have been made to the investment services, activities or financial instruments, the firm shall list all investment services, activities or financial instruments to be provided by the tied agent.



management of the tied agent:

Home Member State:

Authorisation Status: Authorised by [Home Member State  
Competent Authority]

Authorisation Date:

Reference or hyperlink to the public register  
where the tied agent is registered

**Part 2 – Programme of operations**

**Intended investment services or activities to be provided by the tied agent\*:**

	Investment services and activities										Ancillary services						
		A1	A2	A3	A4	A5	A6	A7	A8	A9	B1	B2	B3	B4	B5	B6	B7
Financial Instruments	C1	<input type="checkbox"/>				<input type="checkbox"/>		<input type="checkbox"/>									
	C2	<input type="checkbox"/>				<input type="checkbox"/>		<input type="checkbox"/>									
	C3	<input type="checkbox"/>				<input type="checkbox"/>		<input type="checkbox"/>									
	C4	<input type="checkbox"/>				<input type="checkbox"/>		<input type="checkbox"/>									
	C5	<input type="checkbox"/>				<input type="checkbox"/>		<input type="checkbox"/>									
	C6	<input type="checkbox"/>				<input type="checkbox"/>		<input type="checkbox"/>									
	C7	<input type="checkbox"/>				<input type="checkbox"/>		<input type="checkbox"/>									
	C8	<input type="checkbox"/>				<input type="checkbox"/>		<input type="checkbox"/>									
	C9	<input type="checkbox"/>				<input type="checkbox"/>		<input type="checkbox"/>									
	C10	<input type="checkbox"/>				<input type="checkbox"/>		<input type="checkbox"/>									
	C11	<input type="checkbox"/>				<input type="checkbox"/>		<input type="checkbox"/>									

\* Please place an (x) in the appropriate boxes

**Business plan and structural organisation of the tied agent**

Business plan

1. How will the tied agent contribute to the strategy of the firm/group?
2. What will the main functions of the tied agent be?
3. Describe the main objectives of the tied agent.

Commercial Strategy

1. Describe the types of clients/counterparties the tied agent will be dealing with;
2. Describe how the firm will obtain and deal with these clients;

Organisational structure

1. Briefly describe how the tied agent fits into the corporate structure of the firm/group? (This may be facilitated by attaching an organisational chart)
2. Set out the organisational structure of the tied agent, showing both functional and legal reporting lines;
3. Who will be responsible for the tied agent operations on a day to day basis? Provide details of professional experience of the persons responsible for the management of the tied agent (Please attach CV);
4. Who will be responsible for the internal control functions at the tied agent?
5. Who will be responsible for dealing with complaints in relation to the tied agent?
6. How will the tied agent report to the head office?
7. Detail any critical outsourcing arrangements;

Systems & Controls

Provide a brief summary of arrangements for:

1. safeguarding client money and assets (where applicable);
2. compliance with the 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) and record keeping under Article 16(6);

3. staff code of Conduct, including personal account dealing;
4. anti-money laundering;
5. monitoring and control of critical outsourcing arrangements (where applicable);
6. details of the accredited compensation scheme of which the investment firm or credit institution is a member;

Financial forecast

Attach a forecast statement for profit and loss and cash flow, both over an initial period of thirty six month period;



**Annex VIII: Form for the communication of the branch passport notification from the competent authority of the home Member State to the competent authority of the host Member State**

[Article 16 of Commission Implementing Regulation (EU) No .../...]

Reference number:.....

Date:.....

**Notification in accordance with Article 35(3) of the Directive 2014/65/EU\***

FROM:

Member State:

Competent authority of the home Member State:

Address:

Designated contact point:

Telephone number:

E-mail:

TO:

Member State:

Competent Authority of the host Member State:

Address:

Designated contact point:

Telephone number:

E-mail:

In accordance with Article 35(3) of the Directive 2014/65/EU, we wish to notify you that **[Name of firm]**, an investment firm authorised by [Competent Authority of the home Member State], intends to establish a branch located in [name of the host Member State] to provide the investment services or activities as well as ancillary services listed in the attached passport notification.

**[Name of investment firm]** is a participant in the [name of the home Member State accredited compensation scheme], which provides cover for eligible investors as required by the [name of the home Member State] legislation in respect of investment services and activities carried on by the firm from an establishment in [name of the home Member State] and through its branch in the European Economic Area.



If you have any queries, please do not hesitate to contact us.

Yours sincerely,

[Signature]

\*Please amend accordingly



**Annex IX: Form for the communication of the tied agent passport notification from the competent authority of the home Member State to the competent authority of the host Member State**

[Article 17 of Commission Implementing Regulation (EU) No .../...]

Reference number:.....

Date:.....

**Notification in accordance with Article 35(3) or Article 35(7) of the Directive 2014/65/EU\***

FROM:

Member State:

Competent authority of the home Member State:

Address:

Designated contact point:

Telephone number:

E-mail:

TO:

Member State:

Competent Authority of the host Member State:

Address:

Designated contact point:

Telephone number:

E-mail:

In accordance with Article 34(3) / Article 35(7) of the Directive 2014/65/EU, we wish to notify you that [Name of firm], an investment firm / credit institution authorised by [name of the competent authority of the home Member State], intends to use a tied agent located in [name of the host Member State] to provide the investment services or activities listed in the attached passport notification.

[Name of investment firm/ credit institution] is a participant in the [name of the home Member State accredited compensation scheme], which provides cover for eligible investors as required by the [name of the home Member State] legislation in respect of investment services and activities carried on by the firm from an establishment in [name of the home Member State] and through its tied agent in the European Economic Area.



If you have any queries, please do not hesitate to contact us.

Yours sincerely,

[Signature]

\*Please amend accordingly



## **Annex X: Format for notification on the termination of the operation of a branch or of the cessation of the use of a tied agent established in another Member State**

[Articles 18 and 19 of Commission Implementing Regulation (EU) No .../...]

Reference number:.....

Date:.....

### **Notification in accordance with Article 35(10) of Directive 2014/65/EU regarding the termination of the operation of a branch/ the cessation of the use of a tied agent established in another Member State\***

#### **Part 1 – Contact Information**

Type of notification:

Termination of the operation of a branch / the use of a tied agent

Member State in which the branch/ tied agent is established:

Name of the investment firm/credit institution:

Address of the investment firm / credit institution:

Telephone number of the investment firm / credit institution:

E-mail of the investment firm / credit institution:

Name of the contact person responsible for the termination of the operations of the branch / tied agent:

Name of the branch /tied agent in the territory of the host Member State:

Home Member State:

Home Member State competent authority:

Authorisation Status:

Authorised by [name of the home Member



State competent authority]

Authorisation Date:

Date from which the termination will be effective:

Description of the schedule for the planned termination:

*[to be completed by the investment firm/ credit institution]*

Information on the process of winding down the business operations, including details of how client interests to be protected, complaints resolved and any outstanding liabilities discharged:

*[to be completed by the investment firm/credit institution]*

\* Please amend accordingly



## **Annex XI: Form for the communication on the change of branch particulars notification from the competent authority of the home Member State to the competent authority of the host Member State**

[Article 20 of Commission Implementing Regulation (EU) No .../...]

Reference number:.....

Date:.....

### **Notification in accordance with Article 35(10) of the Directive 2014/65/EU\***

FROM:

Member State:

Competent authority of the home Member State:

Address:

Designated contact point:

Telephone number:

E-mail:

TO:

Member State:

Competent Authority of the host Member State:

Address:

Designated contact point:

Telephone number:

E-mail:

In accordance with Article 35(10) of the Directive 2014/65/EU, we wish to notify you that [Name of firm], an investment firm authorised by [Competent Authority of the home Member State], has:

- (a) amended the investment services and activities/ancillary services being provided by the [name of the branch] established in [name of the host Member State].
- (b) changed its branch name from [add old name of the branch] to [add new name] with effect [date of change]
- (c) changed its branch other contact information to as follows [add any changes made to the contact information of Part 1 in Annex VI] with effect [date of change]
- (d) engaged an additional tied agent located in [name of the host Member State] and provide an updated programme of operations



- (e) changed its own name/ address /contact details from [old name /address / contact details of the investment firm] to [new name / address/ contact details of the investment firm] with effect [date of change].

Please find attached a copy of the change of investment services and activities particulars notification with the relevant changes. If you have any queries, please do not hesitate to contact us.

Yours sincerely,

[Signature]

\* Please amend accordingly



## **Annex XII: Form for the communication on the change of tied agent particulars notification from the competent authority of the home Member State to the competent authority of the host Member State**

[Article 21 of Commission Implementing Regulation (EU) No .../...]

Reference number:.....

Date:.....

### **Notification in accordance with Article 35(10) of the Directive 2014/65/EU\***

FROM:

Member State:

Competent authority of the home Member State:

Address:

Designated contact point:

Telephone number:

E-mail:

TO:

Member State:

Competent Authority of the host Member State:

Address:

Designated contact point:

Telephone number:

E-mail:

In accordance with Article 35(10) of the Directive 2014/65/EU, we wish to notify you that [Name of firm], an investment firm / credit institution authorised by [name of the competent authority of the home Member State], has:

- (a) amended the investment services and activities being provided by [name of the tied agent].
- (b) changed its tied agent name from [ add old name of the tied agent] to [add new name] with effect [date of change]
- (c) changed its tied agent's other contact information to as follows [add any changes made to the contact information of Part 1 in Annex VII] with effect [date of change]
- (d) changed its own name/ address /contact details from [old name /address / contact details of the investment firm / credit institution] to [new name / address/ contact details of the investment firm /credit institution] with effect [date of change].



Please find attached a copy of the change of investment services and activities particulars notification with the relevant changes. If you have any queries, please do not hesitate to contact us.

Yours sincerely,

[Signature]

\* Please amend accordingly



**Annex XIII: Form for the communication the termination of the operation of a branch or of the cessation of the use of a tied agent established in a Member State outside its home Member State**

[Articles 20 and 21 of Commission Implementing Regulation (EU) No .../...]

Reference number:.....

Date:.....

**Notification in accordance with Article 35(10) of the Directive 2014/65/EU regarding the termination of the operation of a branch/ the use of a tied agent established in a Member State outside its home Member State\***

FROM:

Member State:

Competent authority of the home Member State:

Address:

Designated contact point:

Telephone number:

E-mail:

TO:

Member State:

Competent Authority of the host Member State:

Address:

Designated contact point:

Telephone number:

E-mail:

In accordance with Article 35(10) of the Directive 2014/65/EU, we wish to notify you that [Name of firm], an investment firm/ credit institution authorised by [name of the competent authority of the home Member State], has notified us the intention to terminate the operation of the branch/ the use of the tied agent established in your territory with effect [date of termination].

Please find attached a copy of the notification regarding the termination of the operation of [name of the branch] / the cessation of the use of the [name of the tied agent].

If you have any queries, please do not hesitate to contact us.

Yours sincerely,



[Signature]

\* Please amend accordingly

## **RTS 5: Draft regulatory technical standards under Article 46(7) of MiFIR**

**COMMISSION DELEGATED REGULATION (EU) .../..**

**of [...]**

**supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to the regulatory technical standards concerning the information for registration of third country firms and the format of information to be provided to the clients**

**(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (<sup>1</sup>), and in particular Article 46(7) thereof,

Whereas:

- (1) Regulation (EU) No 600/2014 of the European Parliament and of the Council sets out a harmonised framework for the treatment of third-country firms accessing the Union to provide investment services and activities to eligible counterparties and to professional clients.
- (2) It is appropriate to set out the information that a third-country firm applying for the provision of investment services or performance of activities throughout the Union should provide to the European Securities and Markets Authority (ESMA) and the format in which the information to clients as referred to in Article 46(5) of Regulation (EU) No 600/2014 should be provided in order to establish uniform requirements relating to third-country firms and to benefit from the possibility to provide services throughout the Union.
- (3) In order to enable ESMA to correctly identify and register the third country firms, ESMA should be provided with their contact details, their national and international identification codes and proof of their authorisation to provide investment services in the country where the firm is established.

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<sup>1</sup> OJ L 173, 12.6.2014, p. 84.

- (4) Attention should be paid to the language and layout used to provide information to clients by third-country firms, in order to ensure that the information is understandable and clear.
- (5) The application of this Regulation shall be deferred in order to align its date of application with the date prescribed for the application of Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 in Article 55 of said Regulation.
- (6) This Regulation is based on the draft regulatory technical standards submitted by ESMA to the Commission.
- (7) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, 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 Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>2</sup>,

HAS ADOPTED THIS REGULATION:

#### Article 1

#### **Information necessary for the registration**

A third-country firm applying for the provision of investment services or performance of activities throughout the Union in accordance with the second subparagraph of Article 46(4) of Regulation (EU) No 600/2014, shall submit the following information to ESMA:

- (a) full name of the firm, including its legal name and any other trading name to be used by the firm;
- (b) contact details of the firm, including the head office address, telephone number and email address;
- (c) contact details of the person in charge of the application, including telephone number and email address;
- (d) website, where available;
- (e) national identification number of the firm, where available;
- (f) legal entity identifier of the firm (LEI), where available;

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<sup>2</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

- (g) BIC code of the firm, where available;
- (h) name and address of the competent authority of the third country that is responsible for the supervision of the firm. Where more than one authority is responsible for supervision, the details of the respective areas of competence shall be provided;
- (i) the link to the register of each competent authority of the third country, where available;
- (j) information on which investment services, activities, and ancillary services it is authorised to provide in the country where the firm is established;
- (k) the investment services to be provided and activities to be performed in the Union, together with any ancillary services.

#### Article 2

##### **Information submission requirements**

1. The third country firm shall inform ESMA, within 30 days, of any change of the information provided under Article 1(a) to (g), (j) and (k).
2. Information provided to ESMA under Article 1(j) shall be provided through a written declaration issued by a competent authority of the third country.
3. The information provided to ESMA under Article 1 shall be in English, using the Latin alphabet. Any accompanying documents provided to ESMA under Article 1 and in paragraph 2 of this Article shall be in English or, where they have been written in a different language, a certified English translation shall also be provided.

#### Article 3

##### **Information concerning type of clients in the Union**

1. A third-country firm shall provide the information referred to in Article 46(5) of Regulation (EU) No 600/2014 to the clients in a durable medium.
2. The information referred to in Article 46(5) of Regulation (EU) No 600/2014, shall be:
  - (a) provided in English or in the official language, or one of the official languages, of the Member State where the services are to be provided
  - (b) presented and laid out in a way that is easy to read, using characters of readable size;
  - (c) without using colours that may diminish the comprehensibility of the information.

#### Article 4



### **Entry into force**

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 3 January 2017.

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

Done at Brussels,

For the Commission

The President

On behalf of the President

[Position]

## **RTS 6: Draft regulatory technical standards under Article 80(3) of MiFID II**

**COMMISSION DELEGATED REGULATION (EU) .../..**

**of [...]**

**supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the exchange of information between competent authorities when cooperating in supervisory activities, on-the-spot verifications and investigations.**

**(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 instrument amending Directive 2002/92/EC and Directive 2011/61/EU<sup>1</sup>, and in particular, the third subparagraph of Article 80(3),

Whereas:

- (1) The information to be exchanged in accordance with Directive 2014/65/EU should be of a sufficient scope and nature to allow competent authorities to discharge their supervisory duties and functions effectively. Consequently, it is necessary for competent authorities to be able to exchange information that enables them to supervise and enforce the conduct of natural and legal persons in their respective jurisdictions.
- (2) In order for competent authorities to be able to effectively monitor investment firms, market operators and data service providers, it is important for them to exchange relevant information on: general background information and constituting documents (including national incorporation documents, or other documents that provide an insight into the structure and operational activities of an entity); information relating to the authorisation process; information relating to the management bodies of investment firms, including for example information that can verify the suitability of members of the management body such as their work experience (including their curriculum vitae stating relevant education and training, previous professional experience and professional activities or other related functions currently required for the purposes of Directive 2014/65/EU); information on their reputation; information on

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<sup>1</sup> OJ L 173, 12.6.2014, p. 349.

shareholders and members with qualified holdings such as background corporate information and reputation; information on a firm's authorisation including information on those firms granted or refused authorisation; information on the organisation requirements of regulated markets; information on the authorisation of data service providers; information on waivers granted or refused to categorise clients as 'professional'; information on sanctions and enforcement action; information on operational activities and relevant conduct and compliance history; information requested of a remote member of a regulated market.

- (3) It is important to enable competent authorities to also exchange relevant information for the effective monitoring of credit institutions where they provide investment services or perform investment activities.
- (4) In order to discharge their supervisory duties in a comprehensive manner, it is also important that competent authorities, in accordance with Article 69 (2)(b) of Directive 2014/65/EU, be able to exchange relevant information they may hold on any persons, including information on investment firms, market operators, data service reporting providers, credit institutions, financial counterparties, members or participants of regulated markets, multilateral trading facilities or persons exempt under Article 2 or Article 3 of Directive 2014/65/EU. In addition, competent authorities should be able to exchange relevant background information on persons who provide investment services without the required authorisation under Directive 2014/65/EU.
- (5) This Regulation is based on the draft regulatory technical standards submitted by European Securities and Markets Authority to the Commission.
- (6) ESMA has requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>2</sup>.
- (7) ESMA did not publicly consult on these draft regulatory technical standards as these relate to the exchange of information between competent authorities when cooperating in supervisory activities, on-the-spot verifications and investigations and this was considered disproportionate in relation to their scope and impact.
- (8) The application of this Regulation shall be deferred in order to align its date of application with the date prescribed for the application of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 in Article 93(2) of said Directive,

HAS ADOPTED THIS REGULATION:

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<sup>2</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

## Article 1 **Scope**

The information to be exchanged between the competent authority to whom a request for assistance is made (requested authority) and the competent authority who makes a request for assistance (requesting authority) under Article 80 of Directive 2014/65/EU may concern the following entities:

- (a) an investment firm, a market operator or a data reporting service provider authorised in accordance with Directive 2014/65/EU;
- (b) a credit institution authorised under Directive 2013/36/EU providing investment services or performing investment activities, or
- (c) any other natural or legal person, or any unincorporated entity or association, not specified in points (a) and (b) above of this article.

## Article 2 **Information to be exchanged in relation to investment firms, market operators or data reporting service providers**

1. Where a competent authority decides to request cooperation it may request the following information in relation to entities mentioned in point (a) of Article 1 of this regulation:
  - (a) general information and documents relating to the constitution of the entities :
    - i. information concerning the name of the entities, address of their head and/or registered office, contact details, the national identification number of the entity and excerpts from nationally held registers; and
    - ii. information concerning constitutional documents that the entities are required to have under their relevant national legislation;
  - (b) information as specified in Article 7(4) of Directive 2014/65/EU relating to the authorisation process of an entity where such information is not present on the ESMA public register set-up pursuant to Article 8(1)(k) of Regulation (EU) No 1095/2010;
  - (c) information relating to members of the management body, or persons effectively directing the business, of the entities which have been provided as part of the authorisation process including:

- i. their names, personal identification number (where available in that Member State), place of residence and contact details;
  - ii. information on the position to which such persons are appointed within the entity; and
  - iii. an organisational chart of the management structure or identification of persons responsible for the activities carried out under Directive 2014/65/EU by the entity;
- (d) information necessary to assess the suitability of members of the management body or persons effectively directing the business of the entities including:
- i. information relating to the work experience;
  - ii. information relating to the reputation of a member or person including:
    - information on criminal records, or criminal investigations or proceedings, relevant civil and administrative cases, and disciplinary actions (including disqualification as a company director or bankruptcy, insolvency or similar procedures), through an official certificate if available, or through another equivalent document.;
    - information on open investigations, enforcement proceedings, sanctions, or other enforcement decision against a person;
    - refusal of registration, authorisation, membership or licence to carry out a trade, business or profession; the withdrawal, revocation or termination of such a registration, authorisation, membership or licence, or exclusion by a regulatory or government body or by a professional body or association; and
    - dismissal from a position of employment or from a position of trust, fiduciary relationship or similar;
- (e) information on shareholders and members with qualifying holdings including:
- i. list of persons with a qualifying holding;
  - ii. for shareholders who are members of a corporate group, an organisational chart of the corporate group indicating the activities carried by each firm within the group and identifying any firms or individuals within the group operating under the provisions set out in Directive 2014/65/EU; and
  - iii. information and documents necessary to assess their suitability;

- (f) information on the organisational structure, operating conditions and compliance with requirements under Directive 2014/65/EU including:
  - i. information on compliance and risk management policies and procedures that are required under Directive 2014/65/EU in relation to entities and their tied agents;
  - ii. compliance records of the entities including information held by competent authorities;
  - iii. information on organisational and administrative arrangements designed to prevent conflicts of interest as defined in Article 23 of Directive 2014/65/EU;
  - iv. in the case of investment firms which manufacture financial instruments for sale to clients, information on the process for the approval of each financial instrument including information on the target market and distribution strategy as well as information about its review policy arrangements;
  - v. with respect to investment firms, information relating to their obligations pursuant to Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes; and
  - vi. information that can be requested from investment firms in accordance with the activities and requirements specified in Article 16 of Directive 2014/65/EU;
- (g) information on the authorisation of investment firms granted in accordance with Articles 5 to 10 of Directive 2014/65/EU;
- (h) information on the authorisation of data reporting service providers and market operators granted respectively in accordance with Articles 59 to 63 and Articles 44 to 46 Directive 2014/65/EU;
- (i) information on waivers granted or refused in relation to clients who may be treated as professionals on request as set out in Annex II of Directive 2014/65/EU;
- (j) information on sanctions and enforcement action imposed against the entities including:
  - i. information on sanctions levied against an entity, or against the member of the management body or persons effectively directing the business of the entity;

- ii. information relating to breaches by entities, or by the persons fulfilling management positions; and
    - iii. information on criminal records, criminal or administrative investigations or proceedings, relevant civil and administrative cases and disciplinary actions, through an official certificate if available, or another equivalent document.
  - (k) information related to the operational activities and relevant conduct and compliance history related to the subject of the request including:
    - i. information related to the business activities of an entity, in accordance with Directive 2014/65/EU; and
    - ii. internal minutes or records kept by firms and branches for inspection by the relevant competent authority;
  - (l) other information necessary for cooperating in supervisory activities, on-the-spot verifications or investigations, referred to in Article 80(1) of Directive 2014/65/EU.
2. The competent authority of a host Member State may request information from a remote member or participant operating on a regulated market within its jurisdiction. Information may include details of any transactions and orders that have been placed or the identification of a member or participant's clients. Where a host Member State requests the information directly from the member or participant, it shall inform the competent authority of its home Member State in accordance with the requirements set out under Article 80(1) of Directive 2014/65/EU.
3. Where a Member State requires that a third-country firm establishes a branch pursuant to Article 39(1) or Article 39(2) of Directive 2014/65/EU, the competent authority of another Member State may request from the authority competent for the supervision of that branch, information obtained from the home state authority in relation to the authorisation of the opening of the branch, including:
- (a) information relevant for monitoring compliance with Regulation (EU) No 600/2014<sup>3</sup> and/or provisions adopted in implementation of Directive 2014/65/EU; and

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<sup>3</sup> Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012. (OJ L 173, 12.6.2014, p. 84–148).

- (b) response of the third country investment firm's management body, or persons effectively directing the business of the entity, to questions from the competent authority.

#### Article 3

##### **Information to be exchanged in relation to credit institutions**

Where a competent authority decides to request cooperation it may request the following information in relation to entities mentioned in point (b) of Article 1 of this regulation including:

- (a) information referred to in Article 2(1)(a), Article 2(1)(i), Article 2(1)(j) and Article 2(1)(f) of this regulation;
- (b) any further information relevant for monitoring credit institutions compliance with Regulation (EU) No 600/2014 or provisions adopted in implementation of Directive 2014/65/EU; and
- (c) any other information necessary for cooperating in supervisory activities, on-the-spot verifications or investigations, referred to in Article 80(1) of Directive 2014/65/EU.

#### Article 4

##### **Information to be exchanged in relation to persons referred to in point (c) of Article 1**

1. Where a competent authority decides to request cooperation in relation to natural persons referred to in point (c) of Article 1 of this regulation it may request at least the following information: the person's name, date and place of birth, personal national identification number, address, and contact details.
2. In relation to legal persons, or any unincorporated entity or association, referred to in point (c) of Article 1 of this regulation, a competent authority may also request at least the following information: documents certifying the business name and registered address of its head office, and postal address if different, contact details and its national identification number; registration of legal form in accordance with relevant national legislation; a complete list of persons who effectively direct the business, their name, date and place of birth, address, contact details, their national identification number.
3. In addition, competent authorities may request the following information to be exchanged in relation to persons providing investment services or activities without the required authorisation or registration in accordance with Directive 2014/65/EU:
  - (a) details of the investment services and activities that are being provided;

- (b) details of any persons known to have been contacted by the individual or legal person.
4. In any case competent authorities may request information in relation to persons referred to in point (c) of Article 1 of this regulation obtained in accordance with, and relevant for monitoring compliance with Regulation (EU) No 600/2014 or provisions adopted in implementation of Directive 2014/65/EU or may request any other information necessary for cooperating in supervisory activities, on-the-spot verifications or investigations, referred to in Article 80(1) of Directive 2014/65/EU.

Article 5  
**Entry into force**

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 3 January 2017.

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

Done at Brussels,

For the Commission

The President

On behalf of the President

[Position]

## 4. Cost-benefit analysis

### 4.1. Procedures for granting and refusing requests for authorisation of investment firms

#### Executive Summary

1. One of the objectives of the proposed draft RTS under Article 7(4) of MiFID II is to develop a list of information to be provided to the relevant competent authority by an applicant, when requesting authorisation to provide investment services and/or the performance of investment activities. The aim is to set up a harmonised, common list of information that provides legal certainty, clarity and predictability with regard to the authorisation process and to the supervisory decision.
2. Another objective of the proposed draft RTS is to specify the requirements applicable to the management of investment firms and shareholders and members with qualifying holdings, as well as obstacles which may prevent effective exercise of the supervisory function of the competent authority.
3. The purpose of this document is to provide a cost-benefit analysis of proposed requirements included in the RTS. However, the reader should bear in mind that it may sometimes be difficult to disentangle the effects of the Level 1 provisions, for which an impact assessment<sup>4</sup> covering the general aspects of the Directive has been already performed and published by the European Commission, and the specific effects of the Level 2 provisions. Furthermore, it is to be noted that a number of rules at national level already exists in this area and that the RTS broadly constitute their common denominator. For each section of the RTS, the document includes: (i) a short introduction which sets the ground for the RTS, (ii) an explanation of the baseline i.e. of the starting against which the incremental rule arising from the RTS is assessed, (iii) the identification of stakeholders (iv) a summary description of the RTS technical proposals and (v) an analysis of the benefits and costs associated with the proposals set out in the RTS.

#### **Information to be provided to competent authorities, including the programme of operations – Draft RTS under Article 7(4)(a) of MiFID II**

##### Introduction

4. As in MiFID, Article 7(1) of MiFID II requests competent authorities, when granting an authorisation to a firm for the provision of investment services and/or the performance of investment activities, to assess that the applicant firm complies with all requirements under the provisions adopted pursuant to the Directive. However, MiFID left discretion

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<sup>4</sup> See [http://ec.europa.eu/internal\\_market/securities/docs/isd/MiFID/SEC\\_2011\\_1226\\_en.pdf](http://ec.europa.eu/internal_market/securities/docs/isd/MiFID/SEC_2011_1226_en.pdf)

to each competent authority to set up the list of information required from an applicant firm to assess compliance with the Directive and its implementing measures. In order to provide for more clarity and predictability in the authorisation process and in the supervisory decision, MiFID II requires ESMA to develop a harmonised list of information to be provided to the competent authority by a firm when seeking authorisation as investment firm.

## Baseline

5. From a legal perspective, the legislation to consider is:
  - Article 7(2) of MiFID, under which the investment firm must “provide all information, including a programme of operations setting out, inter alia, the types of business envisaged and the organisational structure, necessary to enable the competent authority to satisfy itself that the investment firm has established, at the time of initial authorisation, all the necessary arrangements to meet its obligations (...)”.
  - Article 7(2) of MiFID II is an identical recast of Article 7(2) of MiFID.

## *Empowerment/RTS*

6. Under Article 7(4)(a) of MiFID II, ESMA has to develop regulatory technical standards to specify “the information to be provided to competent authorities under paragraph 2 of [Article 7], including the programme of operations.”
7. The list of information to be provided by the applicant firm set out in the draft RTS partly draws on the information to be provided on the proposed acquirer under the Committee of European Banking Supervisors (CEBS), Committee of European Securities Regulators (CESR)<sup>5</sup> and Committee of European Insurance and Occupational Pensions (CEOPS) “Guidelines for the prudential assessment of acquisitions and increases in holdings in the financial sector required by Directive 2007/44/EC” and the draft technical standards under Article 10a(8) of MiFID on the assessment of acquisitions and increases in qualifying holdings in investment firms<sup>6</sup>.
8. The incremental rule relates to the content and details of the information to be provided by an investment firm to the competent authority when seeking authorisation as set out in the draft RTS compared to the status quo, i.e. the current state of play (including the MiFID/MiFID II requirements set out above).

## Stakeholders

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<sup>5</sup> CEBS/2008/214; CESR/08-543b ;CEIOPS-3L3-19/08

<sup>6</sup> ESMA/2015/613

9. *Entities seeking authorisation as investment firms:* those entities will have to adjust to the new format of the information to be provided and to provide the additional information requested, where applicable.
10. *National competent authorities:* NCAs will have to review format of application files and to process the additional information requested from applicants.

#### Technical Proposals

*Technical Proposal 1: List of information to be provided by an applicant firm to the competent authority for authorisation*

<b>Policy Objective</b>	Setting up an harmonised list of information providing certainty, clarity and predictability in the authorisation process
<b>Technical Proposal</b>	<p>The information to be provided by the applicant firm to the competent authority of the home Member State should comprise the following chapters:</p> <ol style="list-style-type: none"> <li>i. General information;</li> <li>ii. Information on the capital, including, when available, evidence on the source of capital;</li> <li>iii. Information on the shareholders, including documentation relating to their suitability;</li> <li>iv. Information on the management body and persons directing the business, with indication of the position for which they are appointed, their detailed curricula vitae and evidence of their suitability;</li> <li>v. Financial information;</li> <li>vi. Information on the organisation.</li> </ol>

#### Cost-benefit analysis

*Technical Proposal 1: List of information to be provided by an applicant firm to the competent authority for authorisation*

	Qualitative description
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<i>Benefits</i>	<ul style="list-style-type: none"> <li>• A harmonised list will provide certainty, clarity and predictability to firms with regard to the authorisation process and to supervisory decision on the authorisation process.</li> <li>• A standardised list will also benefit competent authorities in facilitating guidance in the authorisation process. It will likely reduce inquiries by applicants and simplify internal processes.</li> <li>• By ensuring a lower level of subjectivity in the authorisation process, a standardised list might reduce the potential for an uneven playing field across MSs.</li> </ul>
<i>Costs to regulator</i>	<p>One-off costs:</p> <ul style="list-style-type: none"> <li>• NCAs will have to amend application rules/guidelines to reflect revised standardised list of information.</li> <li>• NCAs may incur staff training costs to process the additional information provided(if any).</li> </ul> <p>On-going costs:</p> <ul style="list-style-type: none"> <li>• Processing of updated information and data storage costs might be in some cases more burdensome.</li> </ul> <p>Additional costs are not expected to be significant.</p>
<i>Compliance costs</i>	<p>One-off costs:</p> <ul style="list-style-type: none"> <li>• Applicant firms will incur some staff costs, including possibly external consultancy costs, to meet the revised harmonised list.</li> </ul> <p>On-going costs:</p> <ul style="list-style-type: none"> <li>• No material ongoing costs are expected as these technical proposals will impact firms only one-off (at moment of initial authorisation or when seeking authorisation to extend their business to additional investment services or activities or ancillary services).</li> </ul> <p>Additional costs are not expected to be significant.</p>
<i>Costs to other stakeholders</i>	None
<i>Indirect costs</i>	None

**Requirements applicable to the management body of investment firms – Draft RTS under Article 7(4)(b) of MiFID II**

## Introduction

11. Article 9 of MiFID sets out high level requirements for persons who effectively direct the business of investment firms, who have “to be of sufficiently good repute and sufficiently experienced as to ensure the sound and prudent management of the investment firm”. As a response to concerns that have been expressed with regards to the role weaknesses in governance may have had in the 2008 financial crisis, and taking into account the key role of the management body in ensuring that investment firms meet their regulatory obligations, MiFID II provides for detailed requirements for those persons. The directive incorporates by reference Articles 88 and 91 of Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, as supplemented by additional specific requirements. Those governance arrangements are underpinned by the requirement that at least two persons effectively direct the business of the applicant firm. However, by way of derogation, authorisation may be granted to investment firms that are natural persons or to investment firms that are legal persons managed by a single natural person. The purpose of this section of the RTS is to set out the requirements applicable to the management body of an investment firm in such circumstances.

## Baseline

12. From a legal perspective, the legislation to consider is:
  - i. Article 9(4), second paragraph of MiFID, which provides that, where the investment firm is a natural person or is legal person managed by a single natural person, “Member States shall nevertheless require that alternative arrangements be in place which ensure the sound and prudent management of such investment firm”; and
  - ii. Article 9(6) of MiFID II which, for authorising such investment firms, requires that :
    - a. alternative arrangements be in place which ensure the sound and prudent management of the investment firm and the adequate consideration of the interest of clients and the integrity of the market;
    - b. the natural persons concerned are of sufficiently good repute, possess sufficient knowledge, skills and experience and commit sufficient time to perform their duties.

## *Empowerment/ RTS*

13. Under Article 7(4)(b) of MiFID II, ESMA has to develop regulatory technical standards to specify “the requirements applicable to the management of investment firms under Article 9(6).”

14. The draft RTS sets out a series of conditions to be met by the management body of investment firms that are natural persons or legal persons managed by a single natural person for that entity to be authorised. Those conditions relate to the availability of the natural person managing the investment firm as well as to the reputation, experience and availability of the person to be empowered by the management bodies or the by-laws of the firm availability to substitute the manager immediately and perform all his duties if the latter is unable to perform them. The incremental rule relates to the additional requirements imposed on the management body of investment firms that are natural persons or legal persons managed by a single natural person set out in the RTS compared to the status quo, i.e. the current state of play. The status quo may be existing regulatory requirements for such investment firms at domestic level or the MiFID/MiFID II requirements set out above.

#### Stakeholders

15. *Natural persons and legal person managed by a single natural person seeking authorisation as investment firms:* these persons may incur additional costs if they have to enhance staffing and/or internal organisational to meet the requirements set out in the draft RTS. They will benefit from more predictability and certainty in the authorisation process.
16. *National competent authorities:* where the domestic legal framework allows for the authorisation of natural persons and legal person managed by a single natural person, NCAs may have to process more information for the authorisation of such investment firms.
17. *Clients of such investment firms* will benefit from enhanced quality of management body.

#### Technical Proposals

*Technical Proposal 1: Harmonised obligations to be met by the management body of investment firms that are natural persons or legal persons managed by a single natural person for authorisation.*

<b>Policy Objective</b>	Ensuring harmonised and effective requirements for the management body of investment firms that are natural persons or legal persons managed by a single natural person
<b>Technical Proposal</b>	A firm that is a natural person or a legal person managed by a single natural person, may be authorised if : <ul style="list-style-type: none"> <li>a) the natural person is easily contactable at short notice by the competent authorities</li> </ul>

	<p>b) the natural person has sufficient time dedicated to this function;</p> <p>c) the governing bodies or bylaws of the investment firm empower a person to substitute the manager immediately and perform all his duties if the latter is unable to perform them;</p> <p>d) the person empowered pursuant to the previous point shall be of sufficiently good repute and have sufficient experience to substitute the manager for the time of absence, or until a new manager is appointed, so as to ensure sound and prudent management of the investment firm. The person empowered for investment firms that are natural persons, shall be also available to assist insolvency practitioners and relevant authorities in the liquidation of the firm. This person shall have the necessary availability for this function.</p>
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Cost-benefit analysis

*Technical Proposal 1: Harmonised obligations to be met by the management body of investment firms that are natural persons or legal persons managed by a single natural person for authorisation.*

	Qualitative description
<i>Benefits</i>	<ul style="list-style-type: none"> <li>• Harmonised obligations will provide certainty, clarity and predictability to firms with regard to the authorisation process and to supervisory decision on the authorisation process.</li> <li>• Harmonised obligations will also benefit competent authorities in facilitating guidance in the authorisation process. A clearer legal framework will likely reduce inquiries by applicants and simplify internal processes.</li> <li>• Harmonised and enhanced obligations for management body will benefit clients of investment firms that are natural persons or legal persons managed by a single natural person.</li> <li>• Harmonised obligations might reduce the potential for an uneven playing field across MSs.</li> </ul>
<i>Costs to regulator</i>	<p>One-off costs (where investment firms that are natural persons or legal persons managed by a single natural person may be authorised):</p> <ul style="list-style-type: none"> <li>• NCAs will have to amend application rules/guidelines to reflect revised obligations,</li> <li>• NCAs may incur training costs to staff involved in the authorisation</li> </ul>

	<p>process.</p> <p>At this stage, additional costs are not expected to be significant.</p>
<i>Compliance costs</i>	One-off and on-going costs: Firms may incur some minor additional costs in order set up the arrangements to substitute the manager should he not be available.
<i>Costs to other stakeholders</i>	None
<i>Indirect costs</i>	Firms that are natural persons or legal persons managed by a single natural person, will have less discretion in setting up their organisation in order to meet the Level 1 requirement to have “alternative arrangements” to “ensure the sound and prudent management” of the firm.

### **Requirements applicable to shareholders and members with qualifying shareholdings – Draft RTS under Article 7(4)(c) of MiFID II**

#### Introduction

18. Shareholders and members with qualifying holdings have a key role in providing guidance and directions to the management of an investment firms. MiFID II confirms the provisions of MiFID regarding the suitability assessment of shareholders and members with qualifying holdings, taking into account the need to ensure the sound and prudent management of an investments firm. However, as in many other areas, MiFID II goes further than MiFID and, with the two-pronged objective of more certainty, clarity and predictability in the approval process and more harmonised suitability assessments across the EU, empowers ESMA to develop RTS to further specify the requirements applicable to shareholders and members with qualifying holdings.

#### Baseline

19. From a legal perspective, the legislation to consider is :
- Article 10(1), second paragraph of MiFID, which provides that “The competent authorities shall refuse authorisation [of shareholders or members that have qualifying holdings] if, taking into account the need to ensure the sound and prudent management of an investment firm, they are not satisfied as to the suitability of the shareholders or members that have qualifying holdings.”
  - Article 10(1), second paragraph of MiFID II is an identical recast of MiFID.

#### *Empowerment/ RTS*

20. Under Article 7(4)(c) of MiFID II, ESMA has to develop regulatory technical standards to specify “the requirements applicable to shareholders and members with qualifying holdings (...)”.
21. The RTS proposes to use, for the assessment of shareholders and members with qualifying holdings, criteria similar to the ones set out in Article 13(1) of MiFID II for the assessment of proposed acquisitions.
22. The incremental rule relates to those criteria, compared to the status quo. The status quo may refer either to existing regulatory requirements for such investment firms at domestic level, if they are above the MiFID requirements, or to the MiFID/MiFID II requirements set out above.

#### Stakeholders

23. *Entities seeking authorisation as investment firms:* those entities will incur additional costs to provide all the information requested by the competent authority to be able to assess shareholders and members with qualifying holdings. They will benefit from more clarity, predictability and certainty in the authorisation process and supervisory decisions.
24. *National competent authorities:* NCAs will have more information to process, and store, at the time of authorisation for the suitability assessment.
25. *EU investors* will ultimately benefit from more detailed and harmonised criteria for assessing the suitability and financial soundness of investment firms’ shareholders and members with qualifying holdings.

#### Technical Proposals

*Technical Proposal 1: Criteria for assessment of shareholders and members with qualifying holdings consistent with criteria for assessment of proposed acquisition.*

26. Article 13(1) of MiFID II provides a list of criteria against which a proposed acquisition of an investment firm should be assessed in respect to the suitability of the proposed acquirer and the financial soundness of the proposed acquisition. ESMA proposes consistent criteria to be used for the assessment of shareholders and members with qualifying holdings.

<b>Policy Objective</b>	Providing for harmonised requirements for shareholders and members with qualifying holdings
<b>Technical Proposal</b>	The competent authority shall verify that the request of an applicant for authorisation as an investment firm, in accordance to Title II of Directive 2014/65/EU, offers sufficient guarantees for a sound and

	<p>prudent management of the entity by assessing the suitability of proposed shareholders and members with qualifying holdings, having regard to the likely influence on the investment firm of each proposed shareholder or member with qualifying holdings, against all of the following criteria:</p> <ul style="list-style-type: none"> <li>(a) the reputation and experience of any person who will direct the business of the investment firm;</li> <li>(b) the reputation of the proposed shareholders and members with qualifying holdings;</li> <li>(c) the financial soundness of the proposed shareholders and members with qualifying holding, in particular in relation to the type of business pursued and envisaged in the investment firm;</li> <li>(d) whether the investment firm will be able to comply and continue to comply with the prudential requirements set out in Directive 2014/65/EU and, where applicable, Directives 2002/87/EC<sup>7</sup> and 2013/36/EU<sup>8</sup> of the European Parliament and of the Council, in particular, whether the group of which it will become a part has a structure that makes it possible to exercise effective supervision, effectively exchange information among the competent authorities and determine the allocation of responsibilities among the competent authorities;</li> <li>(e) whether there are reasonable grounds to suspect that, in connection with the authorisation of the investment firm, money laundering or terrorist financing within the meaning of Article 1 of Directive 2005/60/EC of the European Parliament and of the Council<sup>9</sup> is being or has been committed or attempted, or that the authorisation of the investment firm could increase the risk thereof.</li> </ul>
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<sup>7</sup> Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council (OJ L 35, 11.2.2003, p. 1).

<sup>8</sup> 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).

<sup>9</sup> Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (OJ L 309, 25.11.2005, p. 15).

## Cost-benefit analysis

*Technical Proposal 1: Criteria for assessment of shareholders and members with qualifying holdings consistent with criteria for assessment of proposed acquisition.*

	Qualitative description
<i>Benefits</i>	<ul style="list-style-type: none"> <li>• Criteria for assessment of shareholders will provide certainty, clarity and predictability to firms with regard to the authorisation process and to supervisory decision on the authorisation process.</li> <li>• Harmonised obligations will also benefit competent authorities in facilitating guidance in the authorisation process and will favour a level playing field across Europe.</li> <li>• Enhanced and harmonised suitability and financial soundness assessment of shareholders and members with qualifying holdings benefits clients of investment firms and, ultimately serves investor protection and market integrity.</li> </ul>
<i>Costs to regulator</i>	<p>One-off costs:</p> <ul style="list-style-type: none"> <li>• NCAs will have to amend application rules/guidelines to reflect revised assessment criteria,</li> </ul> <p>NCAs may incur training costs to staff involved in the authorisation process. Additional costs are not expected to be significant.</p>
<i>Compliance costs</i>	<p>ESMA does not expect firms to incur any significant costs from these proposals as ESMA's suggested approach is to align the requirements applicable to shareholders and members with qualifying holdings, to be assessed by competent authorities when authorising an investment firm, to be consistent with the criteria already set out in Level 1<sup>10</sup> for the assessment of an acquisition of an investment firm.</p>
<i>Costs to other stakeholders</i>	None
<i>Indirect costs</i>	None

## **Obstacles which may prevent the effective exercise of the supervisory functions of the competent authority—Draft RTS Article 7(4)(c) of MiFID II**

<sup>10</sup> ESMA/2015/613

<sup>10</sup> See Article 13 of MiFID II

## Introduction

27. MiFID II replicates the provisions of MiFID under which a competent authority must refuse the authorisation of an investment firm where it would not be in a position to efficiently exercise its supervisory functions. Those provisions become all the more relevant and critical as the investment firms, and more globally, the market structure landscape experiences a higher level of corporate activity, and where multiple business activities, including investment services, may be included in the same group of undertakings. MiFID II therefore empowers ESMA to develop RTS to further specify the obstacles that may prevent the effective supervision of firms.

## Baseline

28. From a legal perspective, the legislation to consider is:

- Article 10(1), third paragraph of MiFID, which provides that “Where close links exist between the investment firm and other natural or legal persons, the competent authority shall grant authorisation only if those links do not prevent the effective exercise of the supervisory functions of the competent authority”;
- Article 10(2) of MiFID which provides that the authorisation of an investment firm must be refused “if the laws, regulations or administrative provisions of a third country governing one or more natural or legal persons with which the undertaking has close links, or difficulties involved in their enforcement, prevent the effective exercise of its supervisory functions”; and
- Articles 10(1) and 10(2) of MiFID II are an identical recast of MiFID.

## *Empowerment/ RTS*

29. Under Article 7(4)(c) of MiFID II, ESMA has to develop regulatory technical standards to specify “(...) obstacles which may prevent effective exercise of the supervisory function of the competent authority under Articles 10(1) and (2)”.

30. The RTS proposes lists the circumstances that may prevent competent authorities from effectively exercise their supervisory function. The incremental rule relates to any additional obligation related to the RTS compared to the status quo, including the MiFID/MiFID II framework described above. However; it can be argued that any cost related to this specific section of the RTS is attributable to the Level 1 text rather than to the Level 2 measure.

## Stakeholders

31. *Entities seeking authorisation as investment firms:* those entities may have to reconsider options where, for instance legal, geographical, financial, or any other

information or situation will be deemed to prevent the effective exercise of its supervisory functions by the competent authority.

32. *National competent authorities*: NCAs will have more solid legal grounds to refuse authorisation where they consider they would not be in a position to effectively exercise their supervisory functions.

#### Technical Proposals

*Technical Proposal 1: Broad definition of situations that may be considered as preventing effective exercise of supervisory powers.*

<b>Policy Objective</b>	Enabling competent authorities to effectively exercise their supervisory functions.
<b>Technical Proposal</b>	A group structure, within which the investment firm will operate, that is complex and not sufficiently transparent, or has a geographical location of group entities, or includes activities performed by the group entities that may prevent the competent authority to effectively appraise the suitability of the shareholders or members with qualifying holdings or the influence of close links with the investment firm, shall be considered to be an obstacle to the exercise of the supervisory function of the competent authority for the purpose of Article 10(1) and (2) of Directive 2014/65/EU.

#### Cost/benefit assessment

*Technical Proposal 1: Broad definition of situations that may be considered as preventing effective exercise of supervisory powers.*

	Qualitative description
<i>Benefits</i>	<ul style="list-style-type: none"> <li>• Effective exercise of supervisory functions powers by competent authorities</li> <li>• Effective exercise of supervisory functions serves investor protection and market integrity.</li> </ul>
<i>Costs to regulator</i>	None
<i>Compliance costs</i>	None

<i>Costs to other stakeholders</i>	None
<i>Indirect costs</i>	None

### **Draft Implementing Technical Standards under Article 7(5) of MiFID II**

33. As empowered by Article 7(5) of MiFID II, ESMA has developed draft Implementing Technical Standards (ITSs) to determine standard forms, templates and procedures for the notification or provision of information to the home competent authority by entities applying for an authorisation as investment firm.
34. Common standard forms, templates and procedures further contribute to the common understanding and enforcement among Member States' competent authorities of the authorisation process.
35. For competent authorities, it is likely that a clearer legal framework with specified templates and procedures will clarify the authorisation process, reducing the volume of inquiries by applicants and simplifying internal processes.
36. For firms or natural persons applying for authorisation, common standard forms, templates and procedures provide additional clarity and predictability in the authorisation process and contribute to ensuring a level playing field amongst applicants, whatever the competent authority they are applying to for authorisation.
37. Considering the above arguments, it can be argued that while standard forms, templates and procedures might provide clear benefits in the form of a more streamlined and efficient recognition process throughout the EU, one-off implementing costs are marginal and on-going are near to zero.

## **4.2. Freedom to provide investment services and activities / Establishment of a branch**

### **Executive Summary**

38. The objective of the proposed RTS under Articles 34(8) and 35(11) is to develop an exhaustive list of information to be notified to the relevant competent authority by investment firms and credit institutions exercising their rights under the freedom to provide services or the freedom of establishment.
39. The purpose of this document is to provide a cost-benefit analysis of the proposed RTS against the status quo, including of course the Level 1. However, in practice, it may

sometimes be very difficult to disentangle the effects of the Level 1 provisions, for which an impact assessment<sup>11</sup> covering the general aspects of the Directive has been already performed and published by the European Commission, and the effects of the Level 2 provisions.

40. The proposed RTS are based significantly on the existing CESR Recommendation 'Protocol on MiFID Passport Notifications'. While this is of course not formally binding, its impact needs to be taken into account when assessing the marginal effects of current technical proposals.
41. The document includes (i) a short introduction sets the ground for the RTS, (ii) an explanation of the baseline i.e. of the starting against which the incremental rule arising from the RTS is assessed, (iii) the identification of stakeholders (iv) a summary description of the RTS technical proposals and (v) a qualitative analysis provides a first overview of the benefits and costs associated with the proposals set out in the RTS.

#### Introduction

42. The right of freedom to provide investment services and activities and the right of establishment on the basis of home country authorisation and supervision has been one of the cornerstones of the EU financial market legal framework since the Directive 93/22/EEC (Investment Services Directive). When an investment firm wishes to provide services and activities or set up a branch in another Member State, or otherwise change the range of services and activities offered, information must be notified to the home competent authority on the services and activities contemplated. The home competent authority will then forward the information to the competent authority in the host Member State.
43. MiFID and MiFID II both refer to a "programme of operations" to describe the information to be notified to the home competent authority. However, in order to enhance clarity, certainty and predictability in the notification process for investment firms and to facilitate internal process within competent authorities through the use harmonised documents, MiFID II empowers ESMA to develop RTS to further specify the content of the information to be provided, as well as ITSs. The information to be provided includes MiFID II latest developments, such as the operation of an Organised Trading Facility (OTF) and a greater attention brought to the use of tied agents by credit institutions, where relevant.
44. Articles 34(9) and 35(12) of MiFID II also empower ESMA to draft Implementing Technical Standards to establish standard forms and procedures for the transmission of the information provided for in the above mentioned RTS.

#### Baseline

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<sup>11</sup> See [http://ec.europa.eu/internal\\_market/securities/docs/isd/mifid/SEC\\_2011\\_1226\\_en.pdf](http://ec.europa.eu/internal_market/securities/docs/isd/mifid/SEC_2011_1226_en.pdf)

## **Information to be notified to the home competent authority under the right of freedom to provide investment services and activities – Draft RTS under Article 34(8) of MiFID II**

45. From a legal perspective, the legislation to consider is Article 31(2) of MiFID, as supplemented by Articles 34(2) and 34(5) of MiFID II.
46. Article 31(2) of MiFID provides that “An investment firm wishing to provide services or activities within the territory of another Member State for the first time, or which wishes to change the range of services or activities so provided, shall communicate (...) to the competent authorities of its home Member State the following information (...)
  - (a) the Member State in which it intends to operate;
  - (b) a programme of operations stating in particular the investment services and/or activities as well as ancillary services which it intends to perform and whether it intends to use tied agents in the territory of the Member States in which it intends to provide services”.
47. Article 34(2) of MiFID II mirrors Article 31(2) of MiFID but adds that “Where an investment firm intends to use tied agents, the investment firm shall communicate to the competent authority of its home Member State the identity of those tied agents”. The same provision applies to credit institution under Article 34(5) of MiFID II.
48. Finally, Article 34(7) of MiFID II extends to the operator of an OTF the obligation imposed by MiFID on the operator of an MTF: “The investment firm or the market operator operating an MTF or an OTF shall communicate to the competent authority of its home Member State the Member State in which it intends to provide such arrangements. The competent authority of the home Member State shall communicate, within one month, that information to the competent authority of the Member State in which the MTF or the OTF intends to provide such arrangements”.

### *Empowerment/RTS*

49. Under Article 34(8) of MiFID II, ESMA has to develop regulatory technical standards to specify “the information to be notified in accordance with paragraphs 2, 4, 5 and 7”.
50. The incremental rule relates to the content and details of the information to be provided by an investment firm to the competent authority under the freedom to provide investment services and activities compared to the status quo, i.e. the current state of play (including the MiFID/MiFID II requirements set out above).
51. The draft RTS (and ITs) are based significantly on the existing CESR work on the passport under MiFID, which includes a Recommendation “Protocol on MiFID Passport

Notifications<sup>12</sup>, a Consultation Paper<sup>13</sup>, and a feedback statement<sup>14</sup>. As there are no fundamental changes made to the substance of the document, it is not expected that the proposed draft RTS would be a source of significant incremental obligation and thereby of significant cost. In addition, it should be noted that, in some instances, such as the provision of information on an OTF and on tied agents, it is difficult to disentangle the effects of the Level 1 text and of the Level 2 measure. Any indication of cost is therefore to be taken as an upper bound.

### **Information to be notified to the home competent authority under the right of establishment – Draft RTS under Article 35(11) of MiFID II**

52. From a legal perspective, the legislation to consider is Article 32(2) of MiFID, as supplemented by Articles 35(2)(c) and (d) and 35(7) of MiFID II.
53. Article 32(2) of MiFID provides that “an investment firm wishing to establish a branch within the territory of another Member State must first notify the competent authority of its home Member State and provide it with the following information : (...) (b) a programme of operations setting out inter alia the investment services and/or activities as well as the ancillary services to be offered and the organisational structure of the branch and indicating whether the branch intends to use tied agents (...). In cases where an investment firm uses a tied agent established in a Member State outside its home Member State, such tied agent shall be assimilated to the branch and shall be subject to the provisions of this Directive relating to branches”.
54. Article 35(2) of MiFID II mirrors Article 32(2) of MiFID but is more specific about the use of tied agents. If the branch intends to use a tied agent, the identity of the tied agent must be provided. In addition, where tied agents are to be used in a Member State in which an investment firm has not established a branch, a description of the intended use of the tied agent(s) and an organisational structure, including reporting lines, indicating how the agent(s) fit into the corporate structure of the investment firm must be provided. Finally, under Article 35(7), credit institutions are required as well to notify the competent authority of their home Member State of their wish to use tied agent established in a Member State outside its home Member State.

#### *Empowerment/RTS*

55. Under Article 35(11) of MiFID II, ESMA has to develop regulatory technical standards to specify “the information to be notified in accordance with paragraphs 2, 4, 7, and 10”.
56. The incremental rule relates to the content and details of the information to be provided to the competent authority by an investment firm wishing to make use of the right of

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<sup>12</sup> CESR/07-337b

<sup>13</sup> CESR/06-669

<sup>14</sup> CESR/07-318

establishment arising from the proposed RTS, compared to the status quo, i.e. the current state of play (including the MiFID/MiFID II requirements set out above).

57. The draft RTS (and ITSs) are based significantly on the existing CESR work on the passport under MiFID, which includes a Recommendation “Protocol on MiFID Passport Notifications”<sup>15</sup>, a Consultation Paper<sup>16</sup>, and a feedback statement<sup>17</sup>. As there are no fundamental changes made to the substance of the document, it is not expected that the draft RTS would be a source of significant incremental obligation and thereby of significant cost. In addition, it should be noted that, in some instances, such as the provision of information on an Organised Trading Facility (OTF) and on tied agents, it is difficult to disentangle the effects of the Level 1 text and of the Level 2 measure. Any indication of cost is therefore to be taken as an upper bound.

#### Stakeholders

58. *Investment firms (and credit institutions, where relevant) wishing to make use of the freedom to provide investment services and activities or of the right of establishment:* those firms will have to adjust to the new format of the information to be provided and to provide the additional information requested.
59. *Market operators operating an MTF and/or an OTF:* such market operators will have to comply with the harmonised and standardised information to be provided on arrangements to facilitate access.
60. *National competent authorities:* NCAs will have to adapt to the standardised format and review more information upon notification by an investment firm.

#### Technical Proposals

*Technical Proposal 1: List of information to be notified in an investment firm passport notification and changes thereof.*

<b>Policy Objective</b>	Providing certainty, clarity and predictability in the passport notification process and facilitating review by competent authorities.
<b>Technical Proposal 1</b>	<p>Information to be notified by investment firms (and credit institutions, where relevant) to the Home Member State authority for the passporting of investment services with, or without, a branch. This information will include:</p> <ul style="list-style-type: none"> <li>• information on the contact details of the firm,</li> <li>• information on the investment services, activities, ancillary</li> </ul>

<sup>15</sup> CESR/07-337b

<sup>16</sup> CESR/06-669

<sup>17</sup> CESR/07-318

	<p>services and financial instruments which will be provided,</p> <ul style="list-style-type: none"> <li>• information in relation to the arrangements to facilitate access to a MTF or OTF (where relevant),</li> <li>• information on the programme of operations,</li> <li>• information on any changes to the information listed above.</li> </ul>
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Cost-benefit analysis

*Technical Proposal 1: List of information to be notified in an investment firm passport notification and changes thereof.*

	Qualitative description
<i>Benefits</i>	<ul style="list-style-type: none"> <li>• More effective exercise of supervisory functions powers by competent authorities, e.g. through an improved identification of tied agents, which in turn</li> <li>• More effective exercise of supervisory functions serves investor protection and market integrity.</li> </ul>
<i>Costs to regulator</i>	<p>One-off costs:</p> <ul style="list-style-type: none"> <li>• NCAs will have to amend application rules/guidelines to reflect the requirements included in the RTS and process the information.</li> </ul> <p>On-going costs</p> <ul style="list-style-type: none"> <li>• Processing of updated information and data storage costs for additional information.</li> </ul>
<i>Compliance costs</i>	<p>One-off costs:</p> <ul style="list-style-type: none"> <li>• Investment firms (and credit institution where relevant) will have to provide some additional information, compared to current practices, for the passporting of investment services and activities and in particular in relation to tied agents.</li> </ul> <p>On-going costs</p> <ul style="list-style-type: none"> <li>• Update of the information provided.</li> </ul>
<i>Costs to other stakeholders</i>	None

<i>Indirect costs</i>	None
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### **Draft Implementing Technical Standards under Articles 34(9) and 35(12) of MiFID II**

61. As empowered by Articles 34(9) and 35(12) of MiFID II, ESMA has developed draft Implementing Technical Standards (ITS) to determine standard forms, templates and procedures for the transmission of information required when investment firms wish to provide investment services and perform activities to another Member State under the right of freedom to provide investment services and activities or under the right of establishment.
62. Those draft ITSs are based on the existing standards and forms contained in the CESR Protocol on MiFID Notifications and are therefore not expected, at this stage, to be a source of significant additional costs for stakeholders, i.e. national competent authorities and investments firms.
63. Standards procedures covering the language and means of communication of passport notifications which can be used by the investment firms and the competent authorities of home and host Member States will facilitate the exercise of the provision of investment services and activities across Member States. They will also contribute to the efficiency of the performance of the respective tasks and responsibilities of the competent authorities.
64. Considering the above arguments, it can be argued that while standard forms, templates and procedures might provide clear benefits in the form of a more streamlined and efficient recognition process throughout the EU, one-off implementing costs are marginal and on-going are near to zero.

### **4.3. Provision of services and performance of activities by third-country firms following an equivalence decision (general provisions)**

65. The 'Markets in Financial Instruments Regulation' (Regulation (EU) 600/2014) offers the possibility for third-country firms to provide investment services or perform investment activities throughout the Union after registration with ESMA.
66. ESMA is empowered to draft regulatory technical standards to specify the information that the applicant third-country firm shall provide to ESMA in its application for registration in accordance with Article 46(4) of MiFIR and the format of information to be provided in accordance with Article 46(5) of MiFIR.
67. The list of information set out in ESMA's draft RTS cover very basic information (such as name of firm, contact details, identification codes, and information on its authorisation status) that applicant third-country firms will be able to provide to ESMA

without any significant impact in terms of costs. Any compliance costs that third-country firms will have for the initial submission, and subsequent update, of the information will be clearly counterbalanced by the benefits related to the possibility to perform investment activities with or without any ancillary services to eligible counterparties and to professional clients in the Union.

68. Considering the above arguments, it can be argued that while benefits are material, costs are clearly marginal.

#### **4.4. Cooperation between competent authorities in supervisory activities, for on-site verifications or investigations**

69. The 'Markets in Financial Instruments Directive' (Directive (EU) 2014/65) sets out a framework for cooperation between competent authorities of the EU for supervisory activities, on-site (or on the spot) verifications or investigations.

70. ESMA is empowered to adopt regulatory technical standards to specify the information to be exchanged between competent authorities when cooperating in supervisory activities, on-the-spot-verifications, and investigations.

71. In order to strengthen and simplify the cooperation activities ESMA is also mandated to draft implementing technical standards drafted under Article 80(4) of MiFID II and 81(4) on:

- standard forms, templates, and procedures for competent authorities to cooperate in supervisory activities, on-site-verification and investigations; and
- standard forms, templates and procedures for the exchange of information between competent authorities.

72. Strengthening the cooperation between competent authorities will give supervisors a consolidated overview of the markets allowing them to combine their experience. As a result, market integrity and fair and orderly markets will be improved as well as investor protection will be reinforced. These benefits will be achieved by the ongoing information sharing, assistance in sending information requests, and cooperation in cross-border investigations between competent authorities in accordance with this regulation.

73. While bringing considerable benefits in terms of investor protection and market oversight, this regulation does not impose any additional obligations on market participants. All costs involved are imposed on competent authorities and include: costs for transmitting and processing data, and for establishing new (multilateral) memoranda of understanding and cooperation agreements. Furthermore these RTS, and the future ITS by Article 80(4) of MiFID and 81(4) will mitigate the effects of the mentioned costs for competent authorities as a consequence of the standardisation of formats and contents of the agreements.

74. In light of the underlined topics, it can be pondered that while benefits are evidently material, costs are marginal.