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COVER NOTE

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	17 March 2017
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	C(2017) 1888 final
Subject:	CORRIGENDUM of 15.3.2017 to Commission Delegated Directive of 7 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits C(2016) 2031 final

Delegations will find attached document C(2017) 1888 final.

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CORRIGENDUM

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Article 1(1):

for: '1. This Directive shall apply to management companies in accordance with Article 6(4) of Directive 2009/65/EC and Article 6(6) of Directive 2011/61/EU.'

read: '1. This Directive shall apply to investment firms, to management companies in accordance with Article 6(4) of Directive 2009/65/EC of the European Parliament and of the Council* and to alternative investment fund managers in accordance with Article 6(6) of Directive 2011/61/EU of the European Parliament and of the Council**.

* 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) (OJ L 302, 17.11.2009, p. 32).

** Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).'

Article 2(5)(b):

for: '(b) where client funds are held by the investment firm in accordance with Article 4, as well as details of the accounts where client funds are held and the relevant agreements with those entities;

read: '(b) where client funds are held by investment firms in accordance with Article 4, details on the accounts in which client funds are held and on the relevant agreements with those firms;'.

Article 2(5)(c):

for: '(c) where financial instruments held by the investment firm in accordance with Article 3, as well as details of accounts opened with third parties and the relevant agreements with those entities;'

read: '(c) where financial instruments are held by investment firms in accordance with Article 3, details on the accounts opened with third parties and on the relevant agreements with those third parties, as well as details on the relevant agreements with those investment firms;'.

Article 9(7):

for: '7. Investment firms shall ensure the compliance function monitors the development and periodic review of product governance arrangements in order to detect any risk of failure by the firm to comply with the obligations set out in this Article.'

read: '7. Member States shall require investment firms to ensure that the compliance function monitors the development and periodic review of product governance arrangements in order to detect any risk of failure by the firm to comply with the obligations set out in this Article.'

In Article 11(5), in the first subparagraph, in point (a):

for: 'prior to the provision of the relevant investment or ancillary service, the investment firm shall disclose to the client information on the payment or benefit concerned in accordance with the second paragraph of Article 24(9) of Directive 2014/65/EU.'

read: 'prior to the provision of the relevant investment or ancillary service, the investment firm shall disclose to the client information on the payment or benefit concerned in accordance with the second subparagraph of Article 24(9) of Directive 2014/65/EU.'

Article 11(5), second subparagraph:

for: 'In implementing these requirements, investment firms shall take into account the costs and charges rules set out in Article 24(4)(c) of Directive 2014/65/EU and Article 45 of [COMMISSION DELEGATED REGULATION (EU) .../...of XXX supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive, to be completed by PO].'

read: 'In implementing these requirements, investment firms shall take into account the rules on costs and charges set out in Article 24(4)(c) of Directive 2014/65/EU and in Article 50 of [COMMISSION DELEGATED REGULATION (EU) .../... of XXX*].

* Commission Delegated Regulation (EU) .../... of ... supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (OJ L [...], [dd/mm/yyyy], p. [...]).'

Article 12(2):

for: '2. Investment firms providing investment advice on an independent basis or portfolio management shall not accept non-monetary benefits that do not qualify as acceptable minor non-monetary benefits in accordance with the sub-paragraph below.'

read: '2. Investment firms providing investment advice on an independent basis or portfolio management shall not accept non-monetary benefits that do not qualify as acceptable minor non-monetary benefits in accordance with paragraph 3.'

Article 12(3), third subparagraph:

for: 'Disclosure of minor non-monetary benefits shall be made prior to the provision of the relevant investment or ancillary services to clients. In accordance with Article 47(5)(a), minor non-monetary benefits may be described in a generic way.'

read: 'Disclosure of minor non-monetary benefits shall be made prior to the provision of the relevant investment or ancillary services to clients. In accordance with Article 11(5) (a) minor non-monetary benefits may be described in a generic way.'

Article 13(1):

for: '1. Member States shall ensure that the provision of research by third parties to investment firms providing portfolio management or other investment or ancillary

services to clients shall not be regarded as an inducement if it is received in return for any of the following:

- (a) direct payments by the investment firm out of its own resources, ;
- (b) payments from a separate research payment account controlled by the investment firm, provided the following conditions relating to the operation of the account are met:
 - (i) the research payment account is funded by a specific research charge to the client;
 - (ii) as part of establishing a research payment account and agreeing the research charge with their clients, investment firms set and regularly assess a research budget as an internal administrative measure;
 - (iii) the investment firm is held responsible for the research payment account.;
 - (iv) the investment firm regularly assesses the quality of the research purchased based on robust quality criteria and its ability to contribute to better investment decisions.; .
- (c) where an investment firm makes use of the research payment account, it shall provide the following information to clients:
 - (i) before the provision of an investment service to clients, information about the budgeted amount for research and the amount of the estimated research charge for each of them.
 - (ii) annual information on the total costs that each of them has incurred for third party research.'

read: '1. Member States shall ensure that the provision of research by third parties to investment firms providing portfolio management or other investment or ancillary services to clients shall not be regarded as an inducement if it is received in return for either of the following:

- (a) direct payments by the investment firm out of its own resources;
- (b) payments from a separate research payment account controlled by the investment firm, provided the following conditions relating to the operation of the account are met:
 - (i) the research payment account is funded by a specific research charge to the client;
 - (ii) as part of establishing a research payment account and agreeing the research charge with their clients, investment firms set and regularly assess a research budget as an internal administrative measure;
 - (iii) the investment firm is held responsible for the research payment account;
 - (iv) the investment firm regularly assesses the quality of the research purchased based on robust quality criteria and its ability to contribute to better investment decisions.

With regard to point (b) of the first subparagraph, where an investment firm makes use of the research payment account, it shall provide the following information to clients:

- (a) before the provision of an investment service to clients, information about the budgeted amount for research and the amount of the estimated research charge for each of them;
- (b) annual information on the total costs that each of them has incurred for third party research.’.

Article 13(3):

for: ‘3. Every operational arrangement for the collection of the client research charge, where it is not collected separately but alongside a transaction commission, shall indicate a separately identifiable research charge and fully comply with the conditions in paragraph 1, points (b) and (c).’

read: ‘3. Every operational arrangement for the collection of the client research charge, where it is not collected separately but alongside a transaction commission, shall indicate a separately identifiable research charge and shall fully comply with the conditions set out in point (b) of the first subparagraph of paragraph 1 and in the second subparagraph of paragraph 1.’.

In Article 13(6):

for: ‘For the purposes of point (b)(ii) of paragraph 1, the research budget shall be managed solely by the investment firm and is based on a reasonable assessment of the need for third party research.’

read: ‘For the purposes of point (b)(ii) of the first subparagraph of paragraph 1, the research budget shall be managed solely by the investment firm and shall be based on a reasonable assessment of the need for third party research.’.

Article 14(1), first and second subparagraphs:

for: ‘Member States shall adopt and publish, by the date referred to in the first subparagraph of Article 93(1) of Directive 65/2014/EU, at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

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

read: Member States shall adopt and publish, by 3 July 2017 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from 3 January 2018.'.