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FSMA\_2019\_07 of 21/02/2019

## Provision or supply of investment services and/or activities in Belgium on a cross-border basis by foreign investment firms

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### **Scope:**

This Communication is addressed to:

- non-EEA investment firms; and
- EEA investment firms exempted from the Directive 2014/65/UE pursuant to article 2, § 1, l) and m) and article 3 of the Directive.

### **Summary/Objectives:**

Form to be filled in by an investment firm that wishes to provide or supply investment services and/or exercise activities within the territory of Belgium under the freedom to provide services (without establishment in Belgium).

### **Structure:**

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## 1. Exercise of the freedom to provide services – Initial notification

Any foreign investment firm that intends to provide or supply, within the territory of Belgium, under the freedom to provide services, all or some of the investment services and/or exercise activities that it provides in its home State, must inform the FSMA in advance using the form included as Annex to this Communication<sup>1</sup>.

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<sup>1</sup> Articles 12, 14, 14/1 and 14/2 of the Law of 25 October 2016 on access to the business of investment services and on the supervision of portfolio management and investment advice companies (“Law of 25 October 2016”).

The following conditions are applicable:

- (i) These must be services or activities actually provided or performed in their home State;
- (ii) These companies may only approach the following investors:
  - eligible counterparties<sup>2</sup>;
  - “per se” professional clients, i.e. clients considered professional in accordance with the provisions of Section I of Annex II of MiFID, and not clients who may be treated as professionals on request;
  - persons established in Belgium with the nationality of the home State of the company concerned or of a State in which this investment firm has established a branch.
- (iii) Without prejudice to the international agreements binding Belgium, the FSMA is legally empowered to prohibit the provision of investment services in Belgium to companies governed by the law of third States that do not offer the same opportunities to access their market to companies governed by Belgian law (the principle of reciprocity).
- (iv) furthermore, the provision of investment services to persons established in Belgium with the nationality of the home State of the company concerned or of a State in which this investment firm has established a branch is only authorized as long as for the investment services offered or provided in Belgium, the investment firm is subject, in its home State or in the State in which it has established its branch, to supervision equivalent to that to which investment firms governed by Belgian law are subject.

The existence of such conditions does not however imply that the companies concerned receive prior authorization from the FSMA. The investment firms concerned are obliged to identify themselves to the FSMA, specifying the envisaged activity in Belgium, and the categories of investors to which they intend to provide investment services.

By way of this prior notification, the companies are authorized to start their activity, but if the FSMA ascertains that one or another of the conditions are not met, it is entitled to oppose the provision of services or performance of activity in Belgium at any time.

These notifications must be sent using this form to the following e-mail address:

[e-notification.passporting2@fsma.be](mailto:e-notification.passporting2@fsma.be)

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<sup>2</sup> See Article 3 of the Royal Decree of 19 December 2017 containing further detailed rules to transpose the Markets in Financial Instruments Directive.

## 2. Change to an initial notification

Foreign investment firms must notify the FSMA of any change to the information that was previously communicated, and must do so before the implementation of the said change.

The notification must be made using the form included as Annexe to this Communication. Foreign investment firms are required to complete only those parts of the form which are relevant for the notified changes.

**Annex:**

- [FSMA 2019 07-01 / Provision or supply of investment services and/or activities in Belgium on a cross-border basis by foreign investment firms. Articles 12 and 14 of the Belgian Law of 25 October 2016](#)