Commission Delegated Regulation (EU) 2017/2294 of 28 August 2017 amending Delegated Regulation (EU) 2017/565 as regards the specification of the definition of systematic internalisers for the purposes of Directive 2014/65/EU (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) 2017/2294

of 28 August 2017

amending Delegated Regulation (EU) 2017/565 as regards the specification of the definition of systematic internalisers for the purposes of 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 instruments and amending Directive 2002/92/EC and Directive 2011/61/EU[(1)], and in particular Article 4(2) thereof,

Whereas:

(1) In order to further ensure the objective and effective application of the definition of systematic internalisers in the Union as laid down in Article 4(1)(20) of Directive 2014/65/EU, further specifications should be provided on recent technological developments in securities markets concerning matching arrangements in which investment firms may participate.

(2) Technological developments in the securities markets have led to the emergence of electronic communication networks that allow for the linking of several investment firms that intend to operate under the systematic internaliser designation with other liquidity providers engaging in high frequency algorithmic trading techniques. Those developments risk undermining a clear separation between bilateral own account trading when executing client orders and multilateral trading foreseen by Commission Delegated Regulation (EU) 2017/565[(2)]. Those technological and market developments therefore make it necessary to specify that a systematic internaliser is not allowed to engage, on a regular basis, in the internal or external matching of trades via matched principal trading or other types of *de facto* riskless back-to-back transactions in a given financial instrument outside a trading venue.

(3) Insofar as centralised risk management within a group usually involves the transfer of risk accumulated by an investment firm as a result of transactions with third parties to an entity within the same group which has no ability to provide quotes, other information on trading interests or to reject or amend such transactions, those transfers should be still considered as dealing on own account where carried out for the sole purposes of centralising the risk management of the group.

Changes to legislation: There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2017/2294. (See end of Document for details)

(4) For reasons of clarity and legal certainty, the wording on the date of application of Delegated Regulation (EU) 2017/565 should be brought in line with the wording on the date of application of Directive 2014/65/EU.

(5) To ensure the smooth functioning of the financial markets, it is necessary that this Regulation enters into force as a matter of urgency.

(6) The measures provided for in this Regulation are in accordance with the opinion of the Expert Group of the European Securities Committee,

HAS ADOPTED THIS REGULATION:

Article 1

Delegated Regulation (EU) 2017/565 is amended as follows:

(1) the following Article 16a is inserted:

Article 16a

Participation in matching arrangements

An investment firm shall not be considered to be dealing on own account for the purposes of Article 4(1)(20) of Directive 2014/65/EU where that investment firm participates in matching arrangements entered into with entities outside its own group with the objective or consequence of carrying out *de facto* riskless back-to-back transactions in a financial instrument outside a trading venue.;

(2) in Article 91, the second paragraph is replaced by the following:

It shall apply from 3 January 2018..

Article 2

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

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

Done at Brussels, 28 August 2017.

For the Commission

The President

Jean-Claude JUNCKER