Changes to legislation: *There are outstanding changes not yet made to Commission Delegated Regulation (EU) 2017/1946. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)EUR 2017 No. 1946 may be subject to amendment by EU Exit Instruments made by both the Prudential Regulation Authority and the Financial Conduct Authority under powers set out in The Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (S.I. 2018/1115), regs. 2, 3, Sch. Pt. 4. These amendments are not currently available on legislation.gov.uk. Details of relevant amending instruments can be found on their website/s. (See end of Document for details) View outstanding changes*

Commission Delegated Regulation (EU) 2017/1946 of 11 July 2017 supplementing Directives 2004/39/EC and 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for an exhaustive list of information to be included by proposed acquirers in the notification of a proposed acquisition of a qualifying holding in an investment firm (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) 2017/1946

of 11 July 2017

supplementing Directives 2004/39/EC and 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for an exhaustive list of information to be included by proposed acquirers in the notification of a proposed acquisition of a qualifying holding in an investment firm

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC[(1)], and in particular the third subparagraph of Article 10a(8) thereof,

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[(2)], and in particular Article 12(8) thereof,

Whereas:

(1) An exhaustive list of information should be required from a proposed acquirer of a qualifying holding in an investment firm at the time of the initial notification to enable competent authorities to carry out the assessment of the proposed acquisition. Information on the identity of the proposed acquirer and of the persons who will direct the business should be provided by the proposed acquirer irrespective of whether it is a natural or a legal person, in order to enable the competent authority of the target entity to assess the reputation of that proposed acquirer.

(2) Information on the identity of the beneficial owners and on the reputation and experience of the persons who effectively direct the business of the proposed acquirer is also necessary where the proposed acquirer is a legal person. Similarly, where the proposed acquirer is or is intended to be a trust structure, it is necessary for the competent authority of the target entity to obtain information on both the identity of the trustees who will manage the assets of the trust, and the identity of the beneficial owners of those assets to be able to assess the reputation and experience of these persons.

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(3) Where the proposed acquirer is a natural person, it is necessary to obtain information both in relation to the proposed acquirer and in relation to any undertaking formally directed or controlled by the proposed acquirer in order to provide the competent authority of the target entity with full information relevant to the assessment of reputation. Where the proposed acquirer is a legal person it is necessary to obtain this information in relation to any person who effectively directs the business of the proposed acquirer, any undertaking under the proposed acquirer's control, and any shareholder exerting significant influence on the proposed acquirer in order to provide the competent authority with full information relevant to the assessment of reputation.

(4) The information relevant to the assessment of reputation should include details of criminal proceedings, historical or ongoing, as well as civil or administrative cases. Similarly, information should be provided in relation to all open investigations and proceedings, sanctions or other enforcement decisions against the proposed acquirer, as well as other information such as refusal of registration or dismissal from employment or a position of trust which is deemed relevant in order to assess the reputation of the proposed acquirer.

(5) Information on whether an assessment of reputation as an acquirer, or as a person who directs the business of a credit institution, assurance, insurance or re-insurance undertaking, investment firm or any other entity hasalready been conducted by another competent authority or other authority and, if so, the outcome of such assessment, should be provided by the proposed acquirer in order to ensure that the outcome of investigations run by other authorities are duly considered by the competent authority of the target entity when assessing the proposed acquirer.

(6) Financial information concerning the proposed acquirer should be provided in order to assess the financial soundness of that proposed acquirer.

(7) Information on the financial and non-financial interests or relationships of the proposed acquirer with any shareholders or directors or members of senior management of the target entity or person entitled to exercise voting rights in the target entity, or with the target entity itself or its group, should be provided in order to allow the competent authority of the target entity to assess whether the existence of any potential conflict of interests will not affect the financial soundness of the proposed acquirer.

(8) Certain additional information, including information on the shareholding owned or contemplated to be owned before and after the proposed acquisition, is necessary when the proposed acquirer is a legal person in order to allow the competent authority of the target entity to complete the assessment of the proposed acquisition as in such cases the legal and group structures involved may be complex and may necessitate detailed review in relation to reputation, close links, a potential action in concert with other parties, and the ability of the competent authority of the target entity to continue effective supervision of the target entity.

(9) Where the proposed acquirer is an entity established in a third country or is part of a group established outside the Union, additional information should be provided so that the competent authority of the target entity can assess whether there are obstacles to the

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effective supervision of the target entity posed by the legal regime of the third country, and can also ascertain the proposed acquirer's reputation in that third country.

(10) Where the proposed acquirer is a sovereign wealth fund, information should be provided by the proposed acquirer to ascertain the controllers of the fund and its investment policy. This is relevant for the competent authority of the target entity both for the assessment of reputation and for assessing whether there is any impact on the effective supervision of the target entity.

(11) Specific information enabling an assessment as to whether the proposed acquisition will impact on the ability of the competent authority of the target entity to carry out effective supervision of the target entity should be required. This should include an assessment of whether the close links of the proposed acquirer will impact on the ability of the target entity to continue to provide timely and accurate information to its supervisor. For legal persons, it is also necessary to assess the impact of the proposed acquisition on the consolidated supervision of the target entity and the group it would belong to after the acquisition.

(12) Information on the financing of the proposed acquisition, including information concerning all means and sources of financing, should be provided by the proposed acquirer who should be able to present evidence about the original source of all funds and assets in order for the competent authority of the target entity to assess whether there is a risk of money laundering activities.

(13) Proposed acquirers holding a qualifying holding of between 20 % and up to 50 % in the target entity should provide information on strategy to the competent authority of the target entity in order to ensure a comprehensive assessment of the proposed acquisition. Similarly, proposed acquirers holding a qualifying holding of less than 20 % in the target entity but exercising an equivalent influence over it through other means such as the relationships between the proposed acquirer and the existing shareholders, the existence of shareholders' agreements, the distribution of shares, participating interests and voting rights across shareholders or the proposed acquirer's position within the group structure of the target entity should also provide that information to ensure a high degree of homogeneity in assessing proposed acquisitions.

(14) Where there is a proposed change in control of the target entity, the proposed acquirer should, as a general rule, submit a full business plan. However, where there is no proposed change in the control of the target entity, it is sufficient to be in possession of certain information on the entity's future strategy and the proposed acquirer's intentions for the target entity in order to assess whether this will not affect the financial soundness of the proposed acquirer.

(15) It is proportionate that, in certain cases, the proposed acquirer should only produce limited information. In particular, where the proposed acquirer has been assessed by the competent authority of the target entity within the previous two years, or where the target entity is a small investment firm and the proposed acquirer is an entity authorised and supervised within the Union, it should only be necessary to provide certain reduced information to the competent authority of the target entity.

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(16) Any exchange or transmission of information between competent authorities, other authorities, bodies or persons should be carried out in accordance with the rules on personal data as laid down in Directive 95/46/EC of the European Parliament and of the Council[(3)].

(17) Regulation (EC) No 45/2001 of the European Parliament and of the Council[(4)] applies to the processing of personal data by the European Securities and Markets Authority (ESMA) in the application of this Regulation.

(18) This Regulation is based on the draft regulatory technical standards submitted by ESMA to the European Commission.

(19) ESMA has conducted an open public consultation 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[(5)].

(20) Directive 2014/65/EU entered into force on 2 July 2014. Article 12(8) of that Directive replaces Article 10a(8) of Directive 2004/39/EC and contains empowerments to ESMA for the development of regulatory technical standards which are identical to those provided for under Article 10a(8) of Directive 2004/39/EC. Furthermore, the content of Articles 10b(4) and Article 10(4) of Directive 2004/39/EC is also identical to the content of Article 13(4) and Article 11(2) of Directive 2014/65/EU. In accordance with Article 94(1) of Directive 2014/65/EU, Directive 2004/39/EC will be repealed with effect from 3 January 2018. The adoption of the technical standards by the Commission in accordance with Article 10a(8) of Directive 2004/39/EC should also be considered in compliance with Article 12(8) of Directive 2014/65/EU with the consequence that the technical standard will continue to apply after 3 January 2018 without the need for further amendment,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation sets out rules on the information to be included by a proposed acquirer in the notification of a proposed acquisition to the competent authorities of the investment firm in which the acquirer is seeking to acquire or increase a qualifying holding ('target entity') for the assessment of the proposed acquisition.

Article 2

Information to be provided by the proposed acquirer

A proposed acquirer shall provide to the competent authority of the target entity the information set out in Articles 3 to 12, where applicable, depending on whether the information relates to a natural person or a legal person or a trust.

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Article 3

General information relating to the identity of the proposed acquirer

1 Where the proposed acquirer is a natural person, the proposed acquirer shall provide the competent authority of the target entity with the following identification information:

a personal details including the person's name, date and place of birth, address, and contact details and, where available, the personal national identification number;

b a detailed curriculum vitae or equivalent document, stating relevant education and training, previous professional experience, and any professional activities or other relevant functions currently performed.

2 Where the proposed acquirer is a legal person, it shall provide the competent authority of the target entity with the following information:

a documents certifying the business name and registered address of its head office, and postal address if different, contact details and, where available, its national identification number;

b registration of legal form in accordance with relevant national legislation;

c an up-to-date overview of the entrepreneurial business of the legal person;

d a complete list of persons who effectively direct the business, their name, date and place of birth, address, contact details, their national identification number where available, their detailed curriculum vitae stating relevant education and training, their previous professional experience, and their professional activities or other relevant functions currently performed;

e the identity of all persons who may be considered to be beneficial owners of the legal person, their name, date and place of birth, address, contact details, and, where available, their national identification number.

3 Where the proposed acquirer is or is intended to be a trust, the proposed acquirer shall provide the competent authority of the target entity with the following information:

a the identity of all trustees who manage assets under the terms of the trust document;

b the identity of all persons who are beneficial owners of the trust assets and their respective shares in the distribution of income;

c the identity of all persons who are settlors of the trust.

Article 4

Additional information relating to the proposed acquirer that is a natural person

The proposed acquirer that is a natural person shall also provide the competent authority of the target entity with the following:

(a) in respect of the proposed acquirer and of any undertaking directed or controlled by the proposed acquirer, over the past 10 years:

(1) 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, notably through an official certificate or through another equivalent document;