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# Commission Delegated Regulation (EU) 2017/1943 of 14 July 2016 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)

## COMMISSION DELEGATED REGULATION (EU) 2017/1943

## of 14 July 2016

## 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 and amending Directive 2002/92/EC and Directive 2011/61/EU[(1)], 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 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

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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) National competent authorities may authorise as investment firm a natural person or a legal person managed by a single natural person. It is therefore appropriate to set out authorisation requirements applicable to the management of investment firms that are natural persons or legal persons managed by a single natural person.

(11) 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 taking into account criteria relating to the reputation, experience of the persons directing the business of the investment firm and the financial soundness of the firm.

(12) 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.

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(13) Directive 95/46/EC of the European Parliament and of the Council[(2)] applies to the processing of personal data by the Member States in the application of this Regulation.

(14) For reasons of consistency and in order to ensure the smooth functioning of the financial markets, it is necessary that the provisions laid down in this Regulation and the related national provisions transposing Directive 2014/65/EU apply from the same date.

(15) This Regulation is based on the draft regulatory technical standards submitted by European Securities and Markets Authority (ESMA) to the Commission.

(16) In accordance with Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[(3)], 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:

*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; as well as:

  (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) the 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:

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(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;

(c) any relevant agreements and contracts regarding the capital raised;

(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;

(e) details on the means of transferring financial resources to the firm including the network used to transfer such funds.

For the purposes of point (b), information on types of capital raised shall refer, where relevant, to the types of capital specified under Regulation (EU) No 575/2013, specifically whether the capital comprises Common Equity Tier 1 items, Additional Tier 1 items or Tier 2 items.

*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 and, 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 Commission Delegated Regulation 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[(4)];

(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.

(d) For the purposes of point (b), 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.

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*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, the information may 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;