Changes to legislation: *There are outstanding changes not yet made to Commission Delegated Regulation (EU) 2017/586. 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. 586 may be subject to amendment by EU Exit Instruments made by 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. 1. 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) 2017/586 of 14 July 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the exchange of information between competent authorities when cooperating in supervisory activities, on-the-spot verifications and investigations (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) 2017/586

of 14 July 2016

supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the exchange of information between competent authorities when cooperating in supervisory activities, on-the-spot verifications and investigations

(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 instrument amending Directive 2002/92/EC and Directive 2011/61/EU[(1)], and in particular, the third subparagraph of Article 80(3),

Whereas:

(1) The information to be exchanged in accordance with Directive 2014/65/EU should be of a sufficient scope and nature to allow competent authorities to discharge their supervisory duties and functions effectively. Consequently, it is necessary for competent authorities to be able to exchange information that enables them to supervise the conduct of natural and legal persons in their respective jurisdictions.

(2) In order for competent authorities to be able to effectively monitor investment firms, market operators and data service providers, it is important for them to exchange relevant information on: general background information and constituting documents (including national incorporation documents, or other documents that provide an insight into the structure and operational activities of an entity); information relating to the authorisation process; information relating to the management bodies of investment firms, including for example information that can verify the suitability of members of the management body such as their work experience (including their curriculum vitae stating relevant education and training, previous professional experience and professional activities or other related functions currently required for the purposes of Directive 2014/65/EU); information on their reputation; information on shareholders and members with qualified holdings such as background corporate information and reputation; information on a firm's authorisation including information on those firms granted or refused authorisation; information on the organisation requirements of regulated markets; information on the authorisation of data service providers;

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information on waivers granted or refused to categorise clients as 'professional'; information on sanctions and enforcement action; information on operational activities and relevant conduct and compliance history.

(3) It is important to enable competent authorities to also exchange relevant information for the effective monitoring of credit institutions where they provide investment services or perform investment activities.

(4) In order to discharge their supervisory duties in a comprehensive manner, it is also important that competent authorities be able to exchange relevant information they may hold, including information on investment firms, market operators, data service reporting providers, credit institutions, financial counterparties, members or participants of regulated markets, multilateral trading facilities or persons exempt under Article 2 or 3 of Directive 2014/65/EU. In addition, competent authorities should be able to exchange relevant background information on persons who provide investment services without the required authorisation under Directive 2014/65/EU.

(5) 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.

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

(7) ESMA has 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[(2)].

(8) ESMA did not conduct public consultations on these draft regulatory technical standards as these relate to the exchange of information between competent authorities when cooperating in supervisory activities, on-the-spot verifications and investigations and this was considered disproportionate in relation to the scope and impact,

HAS ADOPTED THIS REGULATION:

Article 1

Scope

The information to be exchanged between the competent authority to whom a request for cooperation is made (requested authority) and the competent authority who makes a request for cooperation (requesting authority) under Article 80 of Directive 2014/65/EU may concern the following entities:

(a) an investment firm, a market operator or a data reporting service provider authorised in accordance with Directive 2014/65/EU;

(b) a credit institution authorised under Directive 2013/36/EU of the European Parliament and of the Council[(3)] providing investment services or performing investment activities;

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(c) any other natural or legal person, or any unincorporated entity or association, not specified in points (a) and (b).

Article 2

Information to be exchanged in relation to investment firms, market operators or data reporting service providers

1 Where a competent authority decides to request cooperation it may request the following information in relation to entities mentioned in point (a) of Article 1:

a general information and documents relating to the constitution of the entities:

(i) information concerning the name of the entities, address of their head and/or registered office, contact details, the national identification number of the entity and excerpts from nationally held registers;

(ii) information concerning constitutional documents that the entities are required to have under their relevant national legislation;

b information as specified in Article 7(4) of Directive 2014/65/EU relating to the authorisation process of an entity where such information is not present on the ESMA public register set-up pursuant to Article 8(1)(k) of Regulation (EU) No 1095/2010;

c information relating to members of the management body, or persons effectively directing the business, of the entities, which have been provided as part of the authorisation process including:

(i) their names, personal identification number (where available in that Member State), place of residence and contact details;

(ii) information on the position to which such persons are appointed within the entity;

(iii) an organisational chart of the management structure or identification of persons responsible for the activities carried out under Directive 2014/65/EU by the entity;

d information necessary to assess the suitability of members of the management body or persons effectively directing the business of the entities, including:

(i) information relating to the work experience;

(ii) information relating to the reputation of a member or person including:

— information on 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), through an official certificate if available, or through another equivalent document,

— information on open investigations, enforcement proceedings, sanctions, or other enforcement decision against a person,

— refusal of registration, authorisation, membership or licence to carry out a trade, business or profession; the withdrawal, revocation or termination of such a registration, authorisation, membership or licence, or exclusion by a regulatory or government body or by a professional body or association,

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— dismissal from a position of employment or from a position of trust, fiduciary relationship or similar;

e information on shareholders and members with qualifying holdings including:

(i) the list of persons with a qualifying holding;

(ii) for shareholders who are members of a corporate group, an organisational chart of the corporate group indicating the activities carried by each firm within the group and identifying any firms or individuals within the group operating under the provisions set out in Directive 2014/65/EU;

(iii) information and documents necessary to assess their suitability;

f information on the organisational structure, operating conditions and compliance with requirements set out in Directive 2014/65/EU including:

(i) information on compliance and risk management policies and procedures that are required under Directive 2014/65/EU in relation to entities and their tied agents;

(ii) compliance records of the entities including information held by competent authorities;

(iii) information on organisational and administrative arrangements designed to prevent conflicts of interest as defined in Article 23 of Directive 2014/65/EU;

(iv) in the case of investment firms which manufacture financial instruments for sale to clients, information on the process for the approval of each financial instrument including information on the target market and distribution strategy as well as information about its review policy arrangements;

(v) with respect to investment firms, information relating to their obligations pursuant to Directive 97/9/EC of the European Parliament and of the Council[(4)];

(vi) information that can be requested from investment firms in accordance with the activities and requirements specified in Article 16 of Directive 2014/65/EU;

g information on the authorisation of investment firms granted in accordance with Articles 5 to 10 of Directive 2014/65/EU;

h information on the authorisation of regulated markets and data reporting service providers granted respectively in accordance with Articles 44, 45 and 46 as well as Articles 59 to 63 of Directive 2014/65/EU;

i information on waivers granted or refused in relation to clients who may be treated as professionals on request as set out in Annex II of Directive 2014/65/EU;

j information on sanctions and enforcement action imposed against the entities including:

(i) information on sanctions levied against an entity, or against the member of the management body or persons effectively directing the business of the entity;

(ii) information relating to breaches by entities, or by the persons fulfilling management positions;

(iii) information on criminal records, criminal or administrative investigations or proceedings, relevant civil and administrative cases and disciplinary actions, through an official certificate if available, or another equivalent document;