Changes to legislation: *There are outstanding changes not yet made to Commission Delegated Regulation (EU) 2017/573. 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. 573 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) 2017/573 of 6 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on requirements to ensure fair and non-discriminatory co-location services and fee structures (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) 2017/573

of 6 June 2016

supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on requirements to ensure fair and non-discriminatory co-location services and fee structures

(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 48(12)(d),

Whereas:

(1) It is important to adopt detailed regulatory technical standards to clearly identify conditions when co-location and fee structures used by trading venues may be considered fair and non-discriminatory.

(2) Directive 2014/65/EU extends the requirements relating to co-location and fee structures to multilateral trading facilities and organised trading facilities. It is therefore important to ensure that those venues are also within the scope of this Regulation.

(3) In order to ensure harmonised conditions, common requirements should apply to all types of co-location services and to trading venues that organise their own data centres or that use data centres owned or managed by third parties.

(4) Trading venues should have the ability to determine their commercial policy as regards co-location and determine which types of market participants they want to grant access to those services provided that their commercial policy is based on objective, transparent and non-discriminatory criteria. Trading venues should not be required to extend their co-location capacities beyond the limits of the space, power, cooling or similar facilities available and should have discretion to decide whether they expand their co-location space or not.

(5) Fair and non-discriminatory co-location services and fee structures require a sufficient degree of transparency to ensure that the obligations laid down in Directive 2014/65/

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EU are not circumvented. Trading venues should therefore use objective criteria when determining rebates, incentives and disincentives.

(6) Fee structures that contribute to conditions leading to disorderly trading conditions through encouraging intensive trading and that may lead to a stress of market infrastructures should be prohibited. Therefore, volume discounts should be allowed, provided that, as price differentiation schemes, they are based on the total trading volume, the total number of trades or the cumulated trading fees generated by one member whereby only the marginal trade executed subsequently to reaching the threshold is executed at a reduced price.

(7) 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.

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

(9) The European Securities and Markets Authority has conducted open public consultations 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 by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[(2)],

HAS ADOPTED THIS REGULATION:

Article 1

Fair and non-discriminatory co-location services

1 Trading venues providing co-location services shall, within the limits of the space, power, cooling and similar facilities available, ensure that such services are provided in a fair and non-discriminatory manner as laid down in paragraphs 2, 3 and 4 in relation to the following:

a data centres they own and manage;

b data centres they own which are managed by a third party selected by them;

c data centres that are owned and managed by a third party with which the trading venue has an outsourcing arrangement for the organisation of the execution infrastructure of the trading venue as well as of the proximity access to it;

d proximity hosting services owned and managed by a third party with a contractual arrangement with a trading venue.

2 Trading venues shall provide all users which have subscribed to the same co-location services access to their network under the same conditions, including as regards space, power, cooling, cable length, access to data, market connectivity, technology, technical support and messaging types.

3 Trading venues shall take all reasonable steps to monitor all connections and latency measurements to ensure the non-discriminatory treatment of all users of co-location services that have the same type of latency access.

4 Trading venues shall make available individual co-location services, without any requirement to purchase bundled services.

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Article 2

Transparency when providing co-location services

Trading venues shall publish the following information on their co-location services on their websites:

(a) a list of services provided providing information about space, power, cooling, cable length, access to data, market connectivity, technology, technical support, message types, telecommunications and related products and services;

(b) the fee structure for each service as set out in Article 3(2);

(c) the conditions for accessing the service, including IT requirements and operational arrangements;

(d) the different types of latency of access available;

(e) the procedure to allocate co-location space;

(f) the requirements on third party providers of co-location services, where applicable.

Article 3

Fair and non-discriminatory fees

1 Trading venues shall charge the same fee and provide the same conditions to all users of the same type of services based on objective criteria. Trading venues shall only establish different fee structures for the same type of services where those fee structures are based on non-discriminatory, measurable and objective criteria relating to:

a the total volume traded, the numbers of trades or cumulated trading fees;
b the services or packages of services provided by the trading venue;
c the scope or field of use demanded;
d the provision of liquidity in accordance with Article 48(2) of Directive 2014/65/EU or in a capacity of being a market maker as defined in Article 4(1)(7) of Directive 2014/65/EU;

2 Trading venues shall ensure that their fee structure is sufficiently granular to allow users to predict the payable fees on the basis of at least the following elements:

a chargeable services, including the activity which will triggers the fee;
b the fee for each service, stating whether the fee is fixed or variable;
c rebates, incentives or disincentives.

3 Trading venues shall make individual services available without being bundled with other services.

Article 4

Transparency of fee structures

Trading venues shall publish the objective criteria for the establishment of their fees and fee structures and other conditions provided for in Article 3, together with execution