Changes to legislation: *There are outstanding changes not yet made to Commission Delegated Regulation (EU) 2017/568. 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. 568 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) 2017/568 of 24 May 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the admission of financial instruments to trading on regulated markets (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) 2017/568

of 24 May 2016

supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the admission of financial instruments to trading on regulated markets

(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 the third subparagraph of Article 51(6) thereof,

Whereas:

(1) Transferable securities should only be considered freely negotiable if before admission to trading no restrictions exist which prevent the transfer of those securities in a way that would disturb creating a fair, orderly and efficient market.

(2) For the admission to trading on a regulated market of a transferable security as defined in Directive 2014/65/EU, in the case of a security within the meaning of Directive 2003/71/EC of the European Parliament and of the Council[(2)], there needs to be sufficient information publicly available so as to enable to value that financial instrument for it to be traded in a fair, orderly and efficient manner. In addition, in the case of shares an adequate number should be available for distribution to the public, and for securitised derivatives suitable settlement and delivery arrangements should be in place.

(3) Transferable securities which fulfil the requirements for admission to an official list in accordance with Directive 2001/34/EC of the European Parliament and of the Council[(3)] should be considered freely negotiable and capable of being traded in a fair, orderly and efficient manner.

(4) The admission to trading on a regulated market of units issued by undertakings for collective investment in transferable securities or alternative investment funds should not allow the avoidance of the relevant provisions of Directive 2009/65/EC of the European Parliament and of the Council[(4)] or of Directive 2011/61/EU of the European Parliament and of the Council[(5)]. Therefore, it is necessary for an operator of a regulated market to verify that the units it admits to trading stem from a collective investment

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scheme that complies with the relevant sectoral legislation. In the case of exchange-traded funds, it is necessary for the operator of a regulated market to ensure that adequate redemption arrangements for investors are in place at all times.

(5) The admission to trading on a regulated market of derivative instruments referred to in points 4 to 10 of Section C of Annex I to Directive 2014/65/EU should take into account whether there is sufficient information available for the valuation of the derivative as well as the underlying, and in the case of physically settled contracts, the existence of appropriate settlement and delivery procedures.

(6) Directive 2003/87/EC of the European Parliament and of the Council[(6)] imposes certain conditions for emission allowances in order to ensure that they are freely negotiable and traded in a fair, orderly and efficient manner. Any emission allowance within the meaning of point 11 of Section C of Annex I to Directive 2014/65/EU recognised for compliance with the requirements of Directive 2003/87/EC should therefore be eligible for admission to trading on a regulated market and no further requirements should be imposed in this Regulation

(7) Arrangements by regulated markets in relation to verifying the compliance of issuers with obligations under Union law and in relation to facilitating access to information which has been made public under Union law should cover the obligations laid down in Regulation (EU) No 596/2014 of the European Parliament and of the Council[(7)], Directive 2003/71/EC and Directive 2004/109/EC of the European Parliament and of the Council[(8)] as those legislative acts contain the core and most important obligations for issuers after the initial admission to trading on a regulated market.

(8) Regulated markets should establish procedures for verifying the compliance of issuers of transferable securities with obligations under Union law which should be accessible for issuers and the public. The policy should ensure that compliance checks are efficient and issuers should be made aware of their obligations by the regulated market.

(9) Regulated markets should facilitate access to information published under the conditions established by Union law available to members and participants via arrangements that provide for easy, fair and non-discriminatory access for all members and participants. The relevant Union law for these purposes includes Directive 2003/71/EC, Directive 2004/109/EC, Regulation (EU) No 596/2014 as well as Regulation (EU) No 600/2014 of the European Parliament and of the Council[(9)]. The access arrangements should ensure that members and participants have access on equal terms to the relevant information that may have an influence on the valuation of a financial instrument.

(10) 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.

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

(12) ESMA 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

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established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[10],

HAS ADOPTED THIS REGULATION:

Article 1

Transferable securities — freely negotiable

1 Transferable securities shall be considered freely negotiable if they can be traded between the parties to a transaction, and subsequently transferred without restriction and if all securities within the same class as the security in question are fungible.

2 Transferable securities which are subject to a restriction on transfer shall not be considered as freely negotiable in accordance with paragraph 1 unless that restriction is not likely to disturb the market. Transferable securities that are not fully paid may be considered as freely negotiable if arrangements have been made to ensure that the negotiability of such securities is not restricted and that adequate information concerning the fact that the securities are not fully paid, and the implications of that fact for shareholders, is publicly available.

Article 2

Transferable securities — fair, orderly and efficient trading

1 When assessing whether a transferable security is capable of being traded in a fair, orderly and efficient manner, a regulated market shall take into account the information required to be prepared under Directive 2003/71/EC or information that is otherwise publicly available such as:

a historical financial information;

b information about the issuer;

c information providing a business overview.

2 In addition to paragraph 1, when assessing whether a share is capable of being traded in a fair, orderly and efficient manner a regulated market shall take into account the distribution of those shares to the public.

3 When assessing whether a transferable security referred to in point (c) of Article 4(1)(44) of Directive 2014/65/EU is capable of being traded in a fair, orderly and efficient manner, the regulated market shall take into account, depending on the nature of the security being admitted, whether the following criteria are satisfied:

a the terms of the security are clear and unambiguous and allow for a correlation between the price of the security and the price or other value measure of the underlying;

b the price or other value measure of the underlying is reliable and publicly available;

c there is sufficient information publicly available of a kind needed to value the security;

d the arrangements for determining the settlement price of the security ensure that this price properly reflects the price or other value measures of the underlying;

e where the settlement of the security requires or provides for the possibility of the delivery of an underlying security or asset rather than cash settlement, there are adequate settlement and delivery procedures for that underlying as well as adequate arrangements to obtain relevant information about it.

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Article 3

Transferable securities — official listing

A transferable security that is officially listed in accordance with Directive 2001/34/EC, and the listing of which is not suspended, shall be deemed to be freely negotiable and capable of being traded in a fair, orderly and efficient manner.

Article 4

Units and shares in collective investment undertakings

1 A regulated market shall, when admitting units or shares of a collective investment undertaking to trading, ensure that those units or shares are permitted to be marketed in the Member State of the regulated market.

2 When assessing whether units or shares in an open-ended collective investment undertaking are capable of being traded in a fair, orderly and efficient manner, a regulated market shall take into account the following:

a the distribution of those units or shares to the public;

b whether there are appropriate market-making arrangements, or whether the management company of the scheme provides appropriate alternative arrangements for investors to redeem the units or shares;

c in the case of exchange-traded funds, whether in addition to market making arrangements appropriate alternative arrangements for investors to redeem units or shares are provided, at least in cases where the value of the units or shares significantly varies from the net asset value;

d whether the value of the units or shares is made sufficiently transparent to investors by means of the periodic publication of the net asset value.

3 When assessing whether units or shares in a closed-end collective investment undertaking are capable of being traded in a fair, orderly and efficient manner, a regulated market shall take into account the following:

a the distribution of those units or shares to the public;

b whether the value of the units or shares is made sufficiently transparent to investors, either by publication of information on the fund's investment strategy or by the periodic publication of the net asset value.

Article 5

Derivatives

1 When assessing whether a financial instrument referred to in points 4 to 10 of Section C of Annex I to Directive 2014/65/EU are capable of being traded in a fair, orderly and efficient manner, a regulated market shall verify that the following conditions are satisfied:

a the terms of the contract establishing the financial instrument are clear and unambiguous, and enable a correlation between the price of the financial instrument and the price or other value measure of the underlying;

b the price or other value measure of the underlying is reliable and publicly available;