

Commission Delegated Directive (EU) 2017/593 of 7 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits (Text with EEA relevance)

CHAPTER II

SAFEGUARDING OF CLIENT FINANCIAL INSTRUMENTS AND FUNDS

Article 5

Use of client financial instruments

1 Member States shall not allow investment firms to enter into arrangements for securities financing transactions in respect of financial instruments held by them on behalf of a client, or otherwise use such financial instruments for their own account or the account of any other person or client of the firm, unless both of the following conditions are met:

- a the client has given his prior express consent to the use of the instruments on specified terms, as clearly evidenced in writing and affirmatively executed by signature or equivalent, and
- b the use of that client's financial instruments is restricted to the specified terms to which the client consents.

2 Member States shall not allow investment firms to enter into arrangements for securities financing transactions in respect of financial instruments which are held on behalf of a client in an omnibus account maintained by a third party, or otherwise use financial instruments held in such an account for their own account or for the account of any other person unless, in addition to the conditions set out in paragraph 1, at least one of the following conditions is met:

- a each client whose financial instruments are held together in an omnibus account must have given prior express consent in accordance with point (a) of paragraph 1;
- b the investment firm must have in place systems and controls which ensure that only financial instruments belonging to clients who have given prior express consent in accordance with point (a) of paragraph 1 are so used.

The records of the investment firm shall include details of the client on whose instructions the use of the financial instruments has been effected, as well as the number of financial instruments used belonging to each client who has given his consent, so as to enable the correct allocation of any loss.

3 Member States shall ensure that investment firms take appropriate measures to prevent the unauthorised use of client financial instruments for their own account or the account of any other person such as:

- a the conclusion of agreements with clients on measures to be taken by the investment firms in case the client does not have enough provision on its account on the settlement date, such as borrowing of the corresponding securities on behalf of the client or unwinding the position;
- b the close monitoring by the investment firm of its projected ability to deliver on the settlement date and the putting in place of remedial measures if this cannot be done; and

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- c the close monitoring and prompt requesting of undelivered securities outstanding on the settlement day and beyond.

4 Member States shall ensure that investment firms adopt specific arrangements for all clients to ensure that the borrower of client financial instruments provides the appropriate collateral and that the firm monitors the continued appropriateness of such collateral and takes the necessary steps to maintain the balance with the value of client instruments.

5 Member States shall ensure that investment firms do not enter into arrangements which are prohibited under Article 16(10) of Directive 2014/65/EU.