

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 IV

INDUCEMENTS

Article 11

Inducements

1 Member States shall require investment firms paying or being paid any fee or commission or providing or being provided with any non-monetary benefit in connection with the provision of an investment service or ancillary service to the client to ensure that all the conditions set out in Article 24(9) of Directive 2014/65/EU and requirements set out in paragraphs 2-5 are met at all times.

2 A fee, commission or non-monetary benefit shall be considered to be designed to enhance the quality of the relevant service to the client if all of the following conditions are met:

- a it is justified by the provision of an additional or higher level service to the relevant client, proportional to the level of inducements received, such as:
 - (i) the provision of non-independent investment advice on and access to a wide range of suitable financial instruments including an appropriate number of instruments from third party product providers having no close links with the investment firm;
 - (ii) the provision of non-independent investment advice combined with either: an offer to the client, at least on an annual basis, to assess the continuing suitability of the financial instruments in which the client has invested; or with another on-going service that is likely to be of value to the client such as advice about the suggested optimal asset allocation of the client; or
 - (iii) the provision of access, at a competitive price, to a wide range of financial instruments that are likely to meet the needs of the client, including an appropriate number of instruments from third party product providers having no close links with the investment firm, together with either the provision of added-value tools, such as objective information tools helping the relevant client to take investment decisions or enabling the relevant client to monitor, model and adjust the range of financial instruments in which they have invested, or providing periodic reports of the performance and costs and charges associated with the financial instruments
- b it does not directly benefit the recipient firm, its shareholders or employees without tangible benefit to the relevant client;
- c it is justified by the provision of an on-going benefit to the relevant client in relation to an on-going inducement.

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A fee, commission, or non-monetary benefit shall not be considered acceptable if the provision of relevant services to the client is biased or distorted as a result of the fee, commission or non-monetary benefit.

3 Investment firms shall fulfil the requirements set out in paragraph 2 on an ongoing basis as long as they continue to pay or receive the fee, commission or non-monetary benefit.

4 Investment firms shall hold evidence that any fees, commissions or non-monetary benefits paid or received by the firm are designed to enhance the quality of the relevant service to the client:

- a by keeping an internal list of all fees, commissions and non-monetary benefits received by the investment firm from a third party in relation to the provision of investment or ancillary services; and
- b by recording how the fees, commissions and non-monetary benefits paid or received by the investment firm, or that it intends to use, enhance the quality of the services provided to the relevant clients and the steps taken in order not to impair the firm's duty to act honestly, fairly and professionally in accordance with the best interests of the client.

5 In relation to any payment or benefit received from or paid to third parties, investment firms shall disclose to the client the following information:

- a prior to the provision of the relevant investment or ancillary service, the investment firm shall disclose to the client information on the payment or benefit concerned in accordance with the second subparagraph of Article 24(9) of Directive 2014/65/EU. Minor non-monetary benefits may be described in a generic way. Other non-monetary benefits received or paid by the investment firm in connection with the investment service provided to a client shall be priced and disclosed separately;
- b where an investment firm was unable to ascertain on an ex-ante basis the amount of any payment or benefit to be received or paid, and instead disclosed to the client the method of calculating that amount, the firm shall also provide its clients with information of the exact amount of the payment or benefit received or paid on an ex-post basis; and
- c at least once a year, as long as (on-going) inducements are received by the investment firm in relation to the investment services provided to the relevant clients, the investment firm shall inform its clients on an individual basis about the actual amount of payments or benefits received or paid. Minor non-monetary benefits may be described in a generic way.

In implementing these requirements, investment firms shall take into account the rules on costs and charges set out in Article 24(4)(c) of Directive 2014/65/EU and in Article 50 of Commission Delegated Regulation (EU) 2017/565⁽¹⁾.

When more firms are involved in a distribution channel, each investment firm providing an investment or ancillary service shall comply with its obligations to make disclosures to its clients.

Article 12

Inducements in respect of investment advice on an independent basis or portfolio management services

1 Member States shall ensure that investment firms providing investment advice on an independent basis or portfolio management return to clients any fees, commissions or any monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the services provided to that client as soon as reasonably possible after receipt. All

fees, commissions or monetary benefits received from third parties in relation to the provision of independent investment advice and portfolio management shall be transferred in full to the client.

Investment firms shall set up and implement a policy to ensure that any fees, commissions or any monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of independent investment advice and portfolio management are allocated and transferred to each individual client.

Investment firms shall inform clients about the fees, commissions or any monetary benefits transferred to them, such as through the periodic reporting statements provided to the client.

2 Investment firms providing investment advice on an independent basis or portfolio management shall not accept non-monetary benefits that do not qualify as acceptable minor non-monetary benefits in accordance with paragraph 3.

3 The following benefits shall qualify as acceptable minor non-monetary benefits only if they are:

- a information or documentation relating to a financial instrument or an investment service, is generic in nature or personalised to reflect the circumstances of an individual client;
- b written material from a third party that is commissioned and paid for by an corporate issuer or potential issuer to promote a new issuance by the company, or where the third party firm is contractually engaged and paid by the issuer to produce such material on an ongoing basis, provided that the relationship is clearly disclosed in the material and that the material is made available at the same time to any investment firms wishing to receive it or to the general public;
- c participation in conferences, seminars and other training events on the benefits and features of a specific financial instrument or an investment service;
- d hospitality of a reasonable *de minimis* value, such as food and drink during a business meeting or a conference, seminar or other training events mentioned under point (c); and
- e other minor non-monetary benefits which a Member States deems capable of enhancing the quality of service provided to a client and, having regard to the total level of benefits provided by one entity or group of entities, are of a scale and nature that are unlikely to impair compliance with an investment firm's duty to act in the best interest of the client.

Acceptable minor non-monetary benefits shall be reasonable and proportionate and of such a scale that they are unlikely to influence the investment firm's behaviour in any way that is detrimental to the interests of the relevant client.

Disclosure of minor non-monetary benefits shall be made prior to the provision of the relevant investment or ancillary services to clients. In accordance with Article 11(5) (a) minor non-monetary benefits may be described in a generic way.

Article 13

Inducements in relation to research

1 Member States shall ensure that the provision of research by third parties to investment firms providing portfolio management or other investment or ancillary services to clients shall not be regarded as an inducement if it is received in return for either of the following:

- a direct payments by the investment firm out of its own resources;

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- b payments from a separate research payment account controlled by the investment firm, provided the following conditions relating to the operation of the account are met:
 - (i) the research payment account is funded by a specific research charge to the client;
 - (ii) as part of establishing a research payment account and agreeing the research charge with their clients, investment firms set and regularly assess a research budget as an internal administrative measure;
 - (iii) the investment firm is held responsible for the research payment account;
 - (iv) the investment firm regularly assesses the quality of the research purchased based on robust quality criteria and its ability to contribute to better investment decisions.

With regard to point (b) of the first subparagraph, where an investment firm makes use of the research payment account, it shall provide the following information to clients:

- a before the provision of an investment service to clients, information about the budgeted amount for research and the amount of the estimated research charge for each of them;
- b annual information on the total costs that each of them has incurred for third party research.

2 Where an investment firm operates a research payment account, Member States shall ensure that the investment firm shall also be required, upon request by their clients or by competent authorities, to provide a summary of the providers paid from this account, the total amount they were paid over a defined period, the benefits and services received by the investment firm, and how the total amount spent from the account compares to the budget set by the firm for that period, noting any rebate or carry-over if residual funds remain in the account. For the purposes of point (b)(i) of paragraph 1, the specific research charge shall:

- a only be based on a research budget set by the investment firm for the purpose of establishing the need for third party research in respect of investment services rendered to its clients; and
- b not be linked to the volume and/or value of transactions executed on behalf of the clients.

3 Every operational arrangement for the collection of the client research charge, where it is not collected separately but alongside a transaction commission, shall indicate a separately identifiable research charge and shall fully comply with the conditions set out in point (b) of the first subparagraph of paragraph 1 and in the second subparagraph of paragraph 1.

4 The total amount of research charges received may not exceed the research budget.

5 The investment firm shall agree with clients, in the firm's investment management agreement or general terms of business, the research charge as budgeted by the firm and the frequency with which the specific research charge will be deducted from the resources of the client over the year. Increases in the research budget shall only take place after the provision of clear information to clients about such intended increases. If there is a surplus in the research payment account at the end of a period, the firm should have a process to rebate those funds to the client or to offset it against the research budget and charge calculated for the following period.

6 For the purposes of point (b)(ii) of the first subparagraph of paragraph 1, the research budget shall be managed solely by the investment firm and shall be based on a reasonable assessment of the need for third party research. The allocation of the research budget to purchase

third party research shall be subject to appropriate controls and senior management oversight to ensure it is managed and used in the best interests of the firm's clients. Those controls include a clear audit trail of payments made to research providers and how the amounts paid were determined with reference to the quality criteria referred to in paragraph 1 (b) (iv). Investment firms shall not use the research budget and research payment account to fund internal research.

7 For the purposes of point (b)(iii) of paragraph 1, the investment firm may delegate the administration of the research payment account to a third party, provided that the arrangement facilitates the purchase of third party research and payments to research providers in the name of the investment firm without any undue delay in accordance with the investment firm's instruction.

8 For the purposes of point (b) (iv) of paragraph 1, investment firms shall establish all necessary elements in a written policy and provide it to their clients. It shall also address the extent to which research purchased through the research payment account may benefit clients' portfolios, including, where relevant, by taking into account investment strategies applicable to various types of portfolios, and the approach the firm will take to allocate such costs fairly to the various clients' portfolios.

9 An investment firm providing execution services shall identify separate charges for these services that only reflect the cost of executing the transaction. The provision of each other benefit or service by the same investment firm to investment firms, established in the Union shall be subject to a separately identifiable charge; the supply of and charges for those benefits or services shall not be influenced or conditioned by levels of payment for execution services.

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- (1) Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (see page 1 of this Official Journal).