

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 6

Inappropriate use of title transfer collateral arrangements

1 Member States shall require that investment firms properly consider, and are able to demonstrate that they have done so, the use of title transfer collateral arrangements in the context of the relationship between the client's obligation to the firm and the client assets subjected to title transfer collateral arrangements by the firm.

2 When considering, and documenting, the appropriateness of the use of title transfer collateral arrangements, investment firms shall take into account all of the following factors:

- a whether there is only a very weak connection between the client's obligation to the firm and the use of title transfer collateral arrangements, including whether the likelihood of a clients' liability to the firm is low or negligible;
- b whether the amount of client funds or financial instruments subject to title transfer collateral arrangements far exceeds the client's obligation, or is even unlimited if the client has any obligation at all to the firm; and
- c whether all clients' financial instruments or funds are made subject to title transfer collateral arrangements, without consideration of what obligation each client has to the firm.

3 Where using title transfer collateral arrangements, investment firms shall highlight to professional clients and eligible counterparties the risks involved and the effect of any title transfer collateral arrangement on the client's financial instruments and funds.