

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 (Text with EEA relevance)

## CHAPTER III

### OPERATING CONDITIONS FOR INVESTMENT FIRMS

#### SECTION 8

#### *Record-keeping*

##### *Article 76*

#### **Recording of telephone conversations or electronic communications<sup>F1</sup>...**

1 Investment firms shall establish, implement and maintain an effective recording of telephone conversations and electronic communications policy, set out in writing, and appropriate to the size and organisation of the firm, and the nature, scale and complexity of its business. The policy shall include the following content:

- a the identification of the telephone conversations and electronic communications, including relevant internal telephone conversations and electronic communications, that are subject to the recording requirements in accordance with [<sup>F2</sup>rules 10A.1.6 to 10A.1.8 and 10A.1.11 to 10.1.14 of the Senior Management Arrangements, Systems and Control sourcebook (“the relevant rules”)]; and
- b the specification of the procedures to be followed and measures to be adopted to ensure the firm's compliance with [<sup>F3</sup>rule 10A.1.6 and 10A.1.7 of the Senior Management Arrangements, Systems and Controls sourcebook] where exceptional circumstances arise and the firm is unable to record the conversation/communication on devices issued, accepted or permitted by the firm. Evidence of such circumstances shall be retained and shall be accessible to [<sup>F4</sup>the FCA].

2 Investment firms shall ensure that the management body has effective oversight and control over the policies and procedures relating to the firm's recording of telephone conversations and electronic communications.

3 Investment firms shall ensure that the arrangements to comply with recording requirements are technology-neutral. Firms shall periodically evaluate the effectiveness of the firm's policies and procedures and adopt any such alternative or additional measures and procedures as are necessary and appropriate. At a minimum, such adoption of alternative or additional measures shall occur when a new medium of communication is accepted or permitted for use by the firm.

4 Investment firms shall keep and regularly update a record of those individuals who have firm devices or privately owned devices that have been approved for use by the firm.

5 Investment firms shall educate and train employees in procedures governing the requirements in [<sup>F5</sup>the relevant rules].

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**Changes to legislation:** There are outstanding changes not yet made to Commission Delegated Regulation (EU) 2017/565. 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) View outstanding changes

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6 To monitor compliance with the recording and record-keeping requirements in accordance with [F<sup>6</sup>the relevant rules], investment firms shall periodically monitor the records of transactions and orders subject to these requirements, including relevant conversations. Such monitoring shall be risk based and proportionate.

7 Investment firms shall demonstrate the policies, procedures and management oversight of the recording rules to the [F<sup>7</sup>FCA] upon request.

8 Before investment firms provide investment services and activities relating to the reception, transmission and execution of orders to new and existing clients, firms shall inform the client of the following:

- a that the conversations and communications are being recorded; and
- b that a copy of the recording of such conversations with the client and communications with the client will be available on request for a period of five years and, where requested by the competent authority, for a period of up to seven years.

The information referred to in the first sub-paragraph shall be presented in the same language(s) as that used to provide investment services to clients.

9 Investment firms shall record in a durable medium all relevant information related to relevant face-to-face conversations with clients. The information recorded shall include at least the following:

- a date and time of meetings;
- b location of meetings;
- c identity of the attendees;
- d initiator of the meetings; and
- e relevant information about the client order including the price, volume, type of order and when it shall be transmitted or executed.

10 Records shall be stored in a durable medium, which allows them to be replayed or copied and must be retained in a format that does not allow the original record to be altered or deleted.

Records shall be stored in a medium so that they are readily accessible and available to clients on request.

Firms shall ensure the quality, accuracy and completeness of the records of all telephone recordings and electronic communications.

11 The period of time for the retention of a record shall begin on the date when the record is created.

#### Textual Amendments

- F1** Words in [Art. 76](#) heading omitted (31.12.2020) by virtue of [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **50(5)(a)** (with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F2** Words in [Art. 76\(1\)\(a\)](#) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **50(5)(b)(i)** (with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F3** Words in [Art. 76\(1\)\(b\)](#) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **50(5)(b)(ii)(aa)** (with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

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| <b>F4</b> | Words in Art. 76(1)(b) substituted (31.12.2020) by <a href="#">The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403)</a> , regs. 1(3), <b>50(5)(b)(ii)(bb)</b> (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1) |
| <b>F5</b> | Words in Art. 76(5) substituted (31.12.2020) by <a href="#">The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403)</a> , regs. 1(3), <b>50(5)(c)</b> (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)            |
| <b>F6</b> | Words in Art. 76(6) substituted (31.12.2020) by <a href="#">The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403)</a> , regs. 1(3), <b>50(5)(c)</b> (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)            |
| <b>F7</b> | Word in Art. 76(7) substituted (31.12.2020) by <a href="#">The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403)</a> , regs. 1(3), <b>50(5)(d)</b> (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)             |

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**Changes and effects yet to be applied to :**

- Regulation power to amend or revoke conferred by [2023 c. 29 s. 1517](#)
- Regulation power to modify conferred by [2023 c. 29 s. 3Sch. 1 Pt. 3](#)
- Regulation power to modify conferred by [2023 c. 29 s. 1317](#)
- Regulation revoked by [2023 c. 29 Sch. 1 Pt. 3](#)

**Changes and effects yet to be applied to the whole legislation item and associated provisions**

- Art. 3(1B) omitted by [S.I. 2022/1297 reg. 2\(3\)](#)
- Art. 3(1ZA) inserted by [S.I. 2022/1297 reg. 2\(2\)\(b\)](#)