

COMMISSION DELEGATED REGULATION (EU) 2023/315**of 25 October 2022****amending the regulatory technical standards laid down in Delegated Regulations (EU) 2015/2205, (EU) No 2016/592 and (EU) 2016/1178 as regards the date at which the clearing obligation takes effect for certain types of contracts****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories ⁽¹⁾, and in particular Article 5(2) thereof,

Whereas:

- (1) Commission Delegated Regulations (EU) 2015/2205 ⁽²⁾, (EU) 2016/592 ⁽³⁾ and (EU) 2016/1178 ⁽⁴⁾ specify, among others, the dates from which the clearing obligation for contracts pertaining to the classes of over-the-counter (OTC) derivatives set out in the Annexes to those Delegated Regulations take effect. Article 3(2), first subparagraph, point (a), of those Delegated Regulations contain deferred dates of application for the clearing obligation for OTC derivative contracts concluded between counterparties which are part of the same group and where one counterparty is established in a third country and the other counterparty is established in the Union. Those deferred dates of application were necessary to ensure that such OTC derivative contracts were not subject to the clearing obligation before the adoption of an implementing act pursuant to Article 13(2) of Regulation (EU) No 648/2012.
- (2) To this date, no implementing act pursuant to Article 13(2) of Regulation (EU) No 648/2012 has yet been adopted in relation to the clearing obligation. The application of the clearing obligation for OTC derivative contracts concluded between counterparties which are part of the same group and where one counterparty is established in a third country and the other counterparty is established in the Union, without the adoption of the implementing act referred to Article 13(2) of Regulation (EU) No 648/2012, would have a detrimental economic impact on Union counterparties. The application of the clearing obligation for OTC derivative intragroup contracts with a third-country counterparty should therefore be further deferred.
- (3) Delegated Regulations (EU) 2015/2205, (EU) No 2016/592 and (EU) 2016/1178 should therefore be amended accordingly.
- (4) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Securities and Markets Authority (ESMA).

⁽¹⁾ OJ L 201, 27.7.2012, p. 1.

⁽²⁾ Commission Delegated Regulation (EU) 2015/2205 of 6 August 2015 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on the clearing obligation (OJ L 314, 1.12.2015, p. 13).

⁽³⁾ Commission Delegated Regulation (EU) 2016/592 of 1 March 2016 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on the clearing obligation (OJ L 103, 19.4.2016, p. 5).

⁽⁴⁾ Commission Delegated Regulation (EU) 2016/1178 of 10 June 2016 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on the clearing obligation (OJ L 195, 20.7.2016, p. 3).

- (5) The amendments to Delegated Regulations (EU) 2015/2205, (EU) No 2016/592 and (EU) 2016/1178 are limited adjustments of the existing regulatory framework. Given the limited scope of those amendments and the urgency of the matter, it would be highly disproportionate for ESMA to conduct open public consultations or analyses of the potential related costs and benefits. ESMA nevertheless requested the advice of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council ⁽⁵⁾ and consulted the European Systemic Risk Board.
- (6) To provide market participants with legal certainty as quickly as possible, this Regulation should enter into force as a matter of urgency,

HAS ADOPTED THIS REGULATION:

Article 1

Amendment to Delegated Regulation (EU) 2015/2205

In Article 3(2), first subparagraph, of Delegated Regulation (EU) 2015/2205, point (a) is replaced by the following:

- ‘(a) 30 June 2025 in case no equivalence decision has been adopted pursuant to Article 13(2) of Regulation (EU) No 648/2012 for the purposes of Article 4 of that Regulation covering the OTC derivative contracts set out in the Annex to this Regulation in respect of the relevant third country;’.

Article 2

Amendment to Delegated Regulation (EU) 2016/592

In Article 3(2), first subparagraph, of Delegated Regulation (EU) 2016/592, point (a) is replaced by the following:

- ‘(a) 30 June 2025 in case no equivalence decision has been adopted pursuant to Article 13(2) of Regulation (EU) No 648/2012 for the purposes of Article 4 of that Regulation covering the OTC derivative contracts set out in the Annex to this Regulation in respect of the relevant third country;’.

Article 3

Amendment to Delegated Regulation (EU) 2016/1178

In Article 3(2), first subparagraph, of Delegated Regulation (EU) 2016/1178, point (a) is replaced by the following:

- ‘(a) 30 June 2025 in case no equivalence decision has been adopted pursuant to Article 13(2) of Regulation (EU) No 648/2012 for the purposes of Article 4 of that Regulation covering the OTC derivative contracts set out in the Annex to this Regulation in respect of the relevant third country;’.

Article 4

Entry into force

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

⁽⁵⁾ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 25 October 2022.

For the Commission
The President
Ursula VON DER LEYEN
