



2024/363

22.1.2024

**COMMISSION DELEGATED REGULATION (EU) 2024/363**

**of 11 October 2023**

**amending the regulatory technical standards laid down in Delegated Regulation (EU) 2015/2205 as regards the transition to the TONA and SOFR benchmarks referenced in certain OTC derivative 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 <sup>(1)</sup>, and in particular Article 5(2), second subparagraph, thereof,

Whereas:

- (1) Commission Delegated Regulation (EU) 2015/2205 <sup>(2)</sup> specifies, among others, a set of classes of over-the-counter (OTC) interest rate derivatives that are subject to the clearing obligation. Delegated Regulation (EU) 2015/2205 was amended by Commission Delegated Regulation (EU) 2022/750 <sup>(3)</sup> as regards the set of classes of OTC interest rate derivatives denominated in euro (EUR), Pound Sterling (GBP), Japanese Yen (JPY) and US Dollar (USD) that are subject to the clearing obligation. That change in the scope of classes that are subject to the clearing obligation reflects the transition to new benchmarks referenced in OTC derivatives, moving away from referencing the euro Overnight Index Average (EONIA) and London Inter-Bank Offered Rate (LIBOR) benchmarks and referencing instead new risk-free rates, as some classes no longer met the criteria that are essential for subjecting them to the clearing obligation while new classes started to meet these criteria.
- (2) The ICE Benchmark Administrator, the administrator for LIBOR, had communicated that the cessation of JPY LIBOR and certain fixings of USD LIBOR was going to take place at the end of 2021, whereas the publication of all remaining settings of USD LIBOR will cease in June 2023. In addition, the Commission, the European Central Bank in its banking supervisory capacity (ECB Banking Supervision), the European Banking Authority (EBA) and the European Securities and Markets Authority (ESMA) issued a joint statement to strongly encourage counterparties to stop using any of the LIBOR settings, including USD LIBOR, as a reference rate in new contracts by 31 December 2021. Since 1 January 2022, counterparties are hence no longer able to enter into OTC interest rate derivatives referencing JPY LIBOR as that benchmark has ceased and counterparties are expected to no longer enter into OTC interest rate derivatives referencing USD LIBOR.
- (3) Regulators and market participants have been working on replacement rates for those currencies, and in particular on the development of new risk-free rates, which are now being used as benchmarks in financial instruments and financial contracts. In particular, the Secured Overnight Financing Rate (SOFR) and the Tokyo Overnight Average Rate (TONA) risk-free rates are produced for USD and JPY respectively. More specifically with respect to the OTC derivative market, OTC interest rate derivative contracts referencing SOFR and TONA are being traded by counterparties and are being cleared at certain Central Counterparties (CCPs).

<sup>(1)</sup> OJ L 201, 27.7.2012, p. 1.

<sup>(2)</sup> 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).

<sup>(3)</sup> Commission Delegated Regulation (EU) 2022/750 of 8 February 2022 amending the regulatory technical standards laid down in Delegated Regulation (EU) 2015/2205 as regards the transition to new benchmarks referenced in certain OTC derivative contracts (OJ L 138, 17.5.2022, p. 6).

- (4) ESMA has been notified of the classes of OTC interest rate derivatives referencing SOFR or TONA that certain CCPs have been authorised to clear. For each of those classes ESMA has assessed again the criteria that are essential for subjecting them to the clearing obligation, including the level of standardisation, the volume and liquidity, and the availability of pricing information. With the overarching objective of reducing systemic risks, ESMA has determined that those classes of OTC interest rate derivatives referencing those risk-free rates should now become subject to the clearing obligation in accordance with the procedure set out in Regulation (EU) No 648/2012. Those classes should therefore be included in the scope of the clearing obligation.
- (5) In general, different counterparties need different periods of time for putting in place the necessary arrangements to start clearing their OTC interest rate derivatives subject to the clearing obligation. However, in this case, counterparties have had time to prepare for the benchmark transition, including the cessation of JPY LIBOR that took place at the end of 2021 or the planned cessation of most settings of USD LIBOR scheduled for June 2023, including with respect to their clearing arrangements. For counterparties already subject to the clearing obligation and clearing OTC interest rate derivatives denominated in JPY or in USD, clearing the new classes referencing the risk-free rates in JPY or USD does not require significant changes, if any at all, to their clearing contracts or processes. Indeed, when counterparties have clearing arrangements in place to clear OTC interest rate derivatives denominated in JPY, then clearing OTC interest rate derivatives referencing the risk-free rate in that currency does not require establishing and implementing brand new clearing arrangements as was the case when they first started clearing OTC interest rate derivatives denominated in that currency. Furthermore, for counterparties that have had clearing arrangements in place to clear OTC interest rate derivatives referencing SOFR, as SOFR Overnight Index Swaps classes of maturities up to 3 years are already in scope of the clearing obligation, then clearing OTC interest rate derivatives referencing SOFR for longer maturities does not require establishing and implementing brand new clearing arrangements. There is no need to introduce an additional phase-in in order to ensure an orderly and timely implementation of that obligation. The changes made to introduce the new classes of OTC interest rate derivatives referencing the risk-free rates and denominated in JPY and USD should start to apply on the date of entry into force of this Regulation.
- (6) Delegated Regulation (EU) 2015/2205 should therefore be amended accordingly.
- (7) This Regulation is based on the draft regulatory technical standards submitted to the Commission by ESMA.
- (8) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits, requested the advice of the Security and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council <sup>(4)</sup>, and consulted the European Systemic Risk Board,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

Delegated Regulation (EU) 2015/2205 is amended as follows:

- (1) in Article 3, the following paragraph 1c is inserted:

‘1c. By way of derogation from paragraph 1, and excluding contracts referred to in paragraph 1b, in respect of contracts pertaining to a class of OTC derivatives set out in the Annex in rows E.4.1 and E.4.2 of Table 4, the clearing obligation for such contracts shall take effect on 11 February 2024.’;

- (2) the Annex is amended in accordance with the Annex to this Regulation.

<sup>(4)</sup> 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).

*Article 2*

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

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

Done at Brussels, 11 October 2023.

*For the Commission*  
*The President*  
Ursula VON DER LEYEN

## ANNEX

In the Annex to Delegated Regulation (EU) 2015/2205, Table 4 is amended as follows:

- (1) the row for entry D.4.3 is deleted;
- (2) the following rows for entries E.4.1 and E.4.2 are added:

E.4.1	OIS	SOFR	USD	7D-50Y	Single currency	No	Constant or variable
E.4.2	OIS	TONA	JPY	7D-30Y	Single currency	No	Constant or variable'