Commission Delegated Regulation (EU) 2020/448 of 17 December 2019 amending Delegated Regulation (EU) 2016/2251 as regards the specification of the treatment of OTC derivatives in connection with certain simple, transparent and standardised securitisations for hedging purposes (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) 2020/448

of 17 December 2019

amending Delegated Regulation (EU) 2016/2251 as regards the specification of the treatment of OTC derivatives in connection with certain simple, transparent and standardised securitisations for hedging purposes

(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 11(15) thereof,

Whereas:

(1) Article 11(15) of Regulation (EU) No 648/2012 has been amended by Article 42(3) of Regulation (EU) 2017/2402 of the European Parliament and of the Council[(2)]. That amendment was made to ensure that, with regard to the margin requirements for non-centrally cleared OTC derivatives, derivatives associated with covered bonds and derivatives associated with securitisations are treated in the same manner. Since Commission Delegated Regulation (EU) 2016/2251[(3)] is based on Article 11(15) of Regulation (EU) No 648/2012, that Delegated Regulation should be amended to reflect the amendment made to Article 11(15) of Regulation (EU) No 648/2012 and thus to include rules on the risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty concluded by a securitisation special purpose entity in connection with a securitisation.

(2) In accordance with the amended Article 11(15) of Regulation (EU) No 648/2012, such rules on the risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty and concluded by a securitisation special purpose entity in connection with a securitisation should take account of the impediments faced by those securitisation special purpose entities in providing collateral. Because securitisation special purpose entities are usually structured to generate little excess of liquidity, they have less assets to be used for the exchange of collateral. That impediment prevents securitisation special purpose entities from exchanging collateral in a way that fully complies with the requirements of Delegated Regulation (EU) 2016/2251. Therefore, under a specific set of conditions securitisation special purpose entities in connection with a Simple, Transparent and Standardised ('STS') securitisation should

Changes to legislation: *There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2020/448. (See end of Document for details)*

not be required to post collateral. This should allow securitisation special purpose entities in connection with an STS securitisation some flexibility, while ensuring that the risks for their counterparties are limited. However, there are no constraints on securitisation special purpose entities in connection with an STS securitisation to collect collateral from their counterparties and to subsequently return it when due. Counterparties of securitisation special purpose entities in connection with an STS securitisation are therefore required to post variation margin in cash. They should have the right to receive back part or all of it, while securitisation special purpose entities should only be required to collect the variation margin received in cash and to post variation margin for the amount in cash received. This is in line with recital 41 of Regulation (EU) 2017/2402 which refers to the need to ensure consistency in treatment between derivatives associated with covered bonds and derivatives associated with securitisations, with regard to the clearing obligation and to the margin requirements on non-centrally cleared OTC derivatives.

(3) Delegated Regulation (EU) 2016/2251 should therefore be amended accordingly,

(4) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority.

(5) The European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority have conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council[(4)], the opinion of the Insurance and Reinsurance Stakeholder Group and the Occupational Pensions Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council[(5)], and the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[(6)],

HAS ADOPTED THIS REGULATION:

Article 1

Amendment to Delegated Regulation (EU) 2016/2251

In Delegated Regulation (EU) 2016/2251, the following Article 30a is inserted:

Article 30a

Treatment of derivatives in connection with securitisations for hedging purposes

1 By way of derogation from Article 2(2) and where the conditions set out in paragraph 2 of this Article are met, counterparties may provide in their risk management procedures the following in connection with OTC derivatives contracts that are concluded by a securitisation special purpose entity in connection with a securitisation as defined in point (1) of Article 2 of