Commission Delegated Regulation (EU) 2020/447 of 16 December 2019 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on the specification of criteria for establishing the arrangements to adequately mitigate counterparty credit risk associated with covered bonds and securitisations, and amending Delegated Regulations (EU) 2015/2205 and (EU) 2016/1178 (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) 2020/447

of 16 December 2019

supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on the specification of criteria for establishing the arrangements to adequately mitigate counterparty credit risk associated with covered bonds and securitisations, and amending Delegated Regulations (EU) 2015/2205 and (EU) 2016/1178

(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 4(6) thereof,

Whereas:

(1) Regulation (EU) 2017/2402 of the European Parliament and the Council[(2)] amended Regulation (EU) No 648/2012 to insert into that Regulation certain conditions under which OTC derivative contracts concluded by covered bond entities in connection with covered bonds, and OTC derivative contracts concluded by securitisation special purpose entities in connection with securitisations, can be exempted from the clearing obligation.

(2) Commission Delegated Regulations (EU) 2015/2205[(3)] and 2016/1178[(4)] already contain a number of conditions under which OTC derivative contracts concluded by a covered bond entity in connection with a covered bond can be excluded from the clearing obligation.

(3) There is a degree of substitutability between OTC derivative contracts concluded by covered bond entities in connection with covered bonds, on the one hand, and OTC derivative contracts concluded by securitisation special purpose entities in connection with securitisations, on the other hand. In order to avoid potential distortion or arbitrage, their treatment toward the clearing obligation should be consistent.

(4) It is therefore appropriate, also in the light of the amendment to Regulation (EU) No 648/2012 by Regulation (EU) 2017/2402, to remove from Delegated Regulations (EU) 2015/2205 and (EU) 2016/1178 all conditions under which OTC derivative

Changes to legislation: *There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2020/447. (See end of Document for details)*

contracts concluded by a covered bond entity in connection with a covered bond can be excluded from the clearing obligation, and to insert those conditions in a new Delegated Regulation which also contains conditions under which OTC derivative contracts concluded by a securitisation special purpose entity in connection with a securitisation can be excluded from that clearing obligation.

(5) Delegated Regulation (EU) 2015/2205 and Delegated Regulation (EU) 2016/1178 should therefore be amended accordingly.

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

(7) 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 and have analysed the potential related costs and benefits. The European Supervisory Authorities have also 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[(5)], 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[(6)], and the opinion of 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[(7)],

HAS ADOPTED THIS REGULATION:

Article 1

Criteria to determine which arrangements under covered bonds mitigate counterparty credit risk

Arrangements under covered bonds shall be considered to adequately mitigate counterparty credit risk, where OTC derivative contracts concluded by covered bond entities in connection with covered bonds comply with all of the following criteria:

(a) those contracts are registered or recorded in the cover pool of the covered bond in accordance with national legislation on covered bonds;

(b) those contracts are not terminated in case of resolution or insolvency of the covered bond issuer or the cover pool;

(c) the counterparty to the OTC derivative contract concluded with covered bond issuers or with cover pools for covered bonds ranks at least pari passu with the covered bond holders, except where the counterparty to the OTC derivative contract concluded with covered bond issuers or with cover pools for covered bonds is the defaulting or the affected party, or waives the pari passu rank;

(d) the covered bond is subject to a regulatory collateralisation requirement of at least 102 %.

Article 2

Criteria to determine which arrangements under securitisations mitigate counterparty credit risk

Arrangements under securitisations shall be considered to adequately mitigate counterparty credit risk where OTC derivative contracts concluded by securitisation special purpose entities in connection with securitisations satisfy all of the following criteria:

(a) the counterparty to the OTC derivative concluded with the securitisation special purpose entity in connection with the securitisation ranks at least *pari passu* with the holders of the most senior securitisation tranche except where the counterparty to the OTC derivative concluded with the securitisation special purpose entity in connection to the securitisation is the defaulting or the affected party;

(b) the securitisation special purpose entity in connection with the securitisation with which the OTC derivatives contract is associated is subject, on an ongoing basis, to a level of credit enhancement of the most senior securitisation note of at least 2 % of the outstanding notes.

Article 3

Amendment to Delegated Regulation (EU) 2015/2205

Article 1(2) of Delegated Regulation (EU) 2015/2205 is deleted.

Article 4

Amendment to Delegated Regulation (EU) 2016/1178

Article 1(2) of Delegated Regulation (EU) 2016/1178 is deleted.

Article 5

Entry into force

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;