Commission Delegated Regulation (EU) 2019/667 of 19 December 2018 amending Delegated Regulations (EU) 2015/2205, (EU) 2016/592 and (EU) 2016/1178 to extend the dates of deferred application of the clearing obligation for certain OTC derivative contracts (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) 2019/667

of 19 December 2018

amending Delegated Regulations (EU) 2015/2205, (EU) 2016/592 and (EU) 2016/1178 to extend the dates of deferred application of the clearing obligation for 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[(1)], and in particular Article 5(2) thereof,

Whereas:

(1) Commission Delegated Regulation (EU) 2015/2205[(2)], Commission Delegated Regulation (EU) 2016/592[(3)] and Commission Delegated Regulation (EU) 2016/1178[(4)] specify, among others, the effective dates of the clearing obligation for contracts pertaining to the classes of OTC derivatives set out in the Annexes to those Regulations.

(2) Those Regulations laid down deferred dates of 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. As stated in the relevant recitals of those Regulations, those deferred dates were necessary to ensure that such OTC derivate 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.

(3) To date, no implementing act pursuant to Article 13(2) of Regulation (EU) No 648/2012 has been adopted in relation to the clearing obligation. Therefore, the application of the clearing obligation to OTC derivative contracts should be further deferred for a defined period of time or until the adoption of those implementing acts.

(4) Delegated Regulation (EU) 2015/2205, Delegated Regulation (EU) 2016/592 and Delegated Regulation (EU) 2016/1178 should therefore be amended accordingly.

(5) The initial deferred dates of application were, in Delegated Regulation (EU) 2015/2205, Delegated Regulation (EU) 2016/592 and Delegated Regulation (EU) 2016/1178, aligned with the date of application of the clearing obligation for counterparties in

Changes to legislation: *There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2019/667. (See end of Document for details)*

Category 4. Because the deferred dates of application should be further extended, that extension should also apply to Category 4 entities.

(6) Taking into consideration the initial deferred dates of application, and to ensure a consistent application of the clearing obligation for intragroup transactions with the date of application of this Regulation, this amending act should enter into force on the day following that of its publication in the *Official Journal of the European Union*.

(7) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority to the Commission.

(8) The European Securities and Markets Authority has 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 Security and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[(5)],

HAS ADOPTED THIS REGULATION:

Article 1

Amendment to Delegated Regulation (EU) 2015/2205

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

2. By way of derogation from paragraph 1, in respect of contracts pertaining to a class of OTC derivatives set out in the Annex and 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, the clearing obligation shall take effect on:

a 21 December 2020 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; or

b the later of the following dates in case an 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 referred to in the Annex to this Regulation in respect of the relevant third country:

(i) 60 days after the date of entry into force of the decision 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 referred to in the Annex to this Regulation in respect of the relevant third country;

(ii) the date when the clearing obligation takes effect pursuant to paragraph 1.

Article 2

Amendment to Delegated Regulation (EU) 2016/592

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

2. By way of derogation from paragraph 1, in respect of contracts pertaining to a class of OTC derivatives set out in the Annex and 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, the clearing obligation shall take effect on:

a 21 December 2020 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; or

b the later of the following dates in case an 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 referred to in the Annex to this Regulation in respect of the relevant third country:

(i) 60 days after the date of entry into force of the decision 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 referred to in the Annex to this Regulation in respect of the relevant third country;

(ii) the date when the clearing obligation takes effect pursuant to paragraph 1.

Article 3

Amendment to Delegated Regulation (EU) 2016/1178

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

2. By way of derogation from paragraph 1, in respect of contracts pertaining to a class of OTC derivatives set out in the Annex and 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, the clearing obligation shall take effect on:

a 21 December 2020 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; or

b the later of the following dates in case an 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 referred to in the Annex to this Regulation in respect of the relevant third country:

(i) 60 days after the date of entry into force of the decision 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 referred to in the Annex to this Regulation in respect of the relevant third country;

(ii) the date when the clearing obligation takes effect pursuant to paragraph 1.

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*.