Commission Delegated Regulation (EU) 2019/565 of 28 March 2019 amending Delegated Regulation (EU) 2015/2205, Delegated Regulation (EU) 2016/592 and Delegated Regulation (EU) 2016/1178 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council as regards the date at which the clearing obligation takes effect for certain types of contracts (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) 2019/565

of 28 March 2019

amending Delegated Regulation (EU) 2015/2205, Delegated Regulation (EU) 2016/592 and Delegated Regulation (EU) 2016/1178 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council 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) On 29 March 2017, the United Kingdom submitted the notification of its intention to withdraw from the Union pursuant to Article 50 of the Treaty on European Union. The Treaties will cease to apply to the United Kingdom from the date of entry into force of a withdrawal agreement, or failing that, two years after that notification, unless the European Council, in agreement with the United Kingdom, unanimously decides to extend that period.

(2) Commission Delegated Regulation (EU) 2019/396[(2)] provides for an amendment to Commission Delegated Regulation (EU) 2015/2205[(3)], Commission Delegated Regulation (EU) 2016/592[(4)] and Commission Delegated Regulation (EU) 2016/1178[(5)] as regards the date at which the clearing obligation takes effect for certain types of contracts. Pursuant to Article 4 of Delegated Regulation (EU) 2019/396, that Regulation is to apply from the date following that on which the Treaties cease to apply to and in the United Kingdom pursuant to Article 50(3) of the Treaty on European Union, unless a withdrawal has entered into force by that date or the two year period referred to in Article 50(3) of the Treaty on European Union has been extended.

(3) By letter of 20 March 2019, the United Kingdom submitted a request for an extension of the period provided for in Article 50(3) of the Treaty on European Union until 30 June 2019, with a view to finalising the ratification of the Withdrawal Agreement[(6)]. On 21 March 2019, the European Council agreed to an extension until 22 May 2019,

Changes to legislation: *There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2019/565. (See end of Document for details)*

provided the Withdrawal Agreement is approved by the House of Commons in the following week. If that is not the case, the European Council agreed to an extension until 12 April 2019. Consequently, Delegated Regulation (EU) 2019/396 will not apply.

(4) However, the reasons underlying Delegated Regulation (EU) 2019/396 will remain, regardless of any extension of the period referred to in Article 50(3) of the Treaty on European Union. In particular, the risks to the smooth functioning of the market and a level playing field between counterparties established in the Union will persist in the case of the United Kingdom's withdrawal from the Union without an agreement after the extended period. Those risks are expected to remain for the foreseeable future.

(5) Delegated Regulation (EU) 2015/2205, Delegated Regulation (EU) 2016/592 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 Securities and Markets Authority to the Commission.

(7) It is necessary to facilitate the implementation of efficient solutions by market participants as quickly as possible. Therefore, the European Securities and Markets Authority have analysed the potential related costs and benefits but have not conducted any open public consultation in accordance with the second subparagraph of Article 10(1) of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[7]. For the same reason, this Regulation should enter into force on the day following that of its publication,

HAS ADOPTED THIS REGULATION:

Article 1

Amendment to Delegated Regulation (EU) 2015/2205

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

(1) in Article 3, the following paragraph is added:

3. By way of derogation from paragraphs 1 and 2, in respect of contracts pertaining to a class of OTC derivatives set out in the Annex, the clearing obligation shall take effect 12 months from the date of application of this Regulation where the following conditions are fulfilled:

a the clearing obligation has not been triggered by 11 April 2019;

b the contracts are novated for the sole purpose of replacing the counterparty established in the United Kingdom with a counterparty established in a Member State.;

(2) in Article 4, paragraph 3 is replaced by the following:

3. For financial counterparties in Category 3 and for transactions referred to in paragraphs 2 and 3 of Article 3 of this Regulation concluded between financial counterparties, the minimum remaining maturity referred to in point (ii) of Article 4(1)(b) of Regulation (EU) No 648/2012, at the date the clearing obligation takes effect, shall be:

a 50 years for contracts that belong to the classes of Table 1 or Table 2 of the Annex;

b 3 years for contracts that belong to the classes of Table 3 or Table 4 of the Annex.

Article 2

Amendment to Delegated Regulation (EU) 2016/592

Delegated Regulation (EU) 2016/592 is amended as follows:

(1) in Article 3, the following paragraph is added:

3. By way of derogation from paragraphs 1 and 2, in respect of contracts pertaining to a class of OTC derivatives set out in the Annex, the clearing obligation shall take effect 12 months from the date of application of this Regulation where the following conditions are fulfilled:

a the clearing obligation has not been triggered by 11 April 2019;

b the contracts are novated for the sole purpose of replacing the counterparty established in the United Kingdom with a counterparty established in a Member State.;

(2) in Article 4, paragraph 3 is replaced by the following:

3. For financial counterparties in Category 3 and for transactions referred to in paragraphs 2 and 3 of Article 3 of this Regulation concluded between financial counterparties, the minimum remaining maturity referred to in point (ii) of Article 4(1)(b) of Regulation (EU) No 648/2012, at the date the clearing obligation takes effect, shall be 5 years and 3 months.

Article 3

Amendment to Delegated Regulation (EU) 2016/1178

Delegated Regulation (EU) 2016/1178 is amended as follows:

(1) in Article 3, the following paragraph is added:

3. By way of derogation from paragraphs 1 and 2, in respect of contracts pertaining to a class of OTC derivatives set out in the Annex, the clearing obligation shall take effect 12 months from the date of application of this Regulation where the following conditions are fulfilled:

a the clearing obligation has not been triggered by 11 April 2019;

b the contracts are novated for the sole purpose of replacing the counterparty established in the United Kingdom with a counterparty established in a Member State.;

(2) in Article 4, paragraph 3 is replaced by the following:

3. For financial counterparties in Category 3 and for transactions referred to in paragraphs 2 and 3 of Article 3 of this Regulation concluded between financial counterparties, the minimum remaining maturity referred to in point (ii) of Article 4(1)