Commission Delegated Regulation (EU) 2019/564 of 28 March 2019 amending Delegated Regulation (EU) 2016/2251 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council as regards the date until which counterparties may continue to apply their risk-management procedures for certain OTC derivative contracts not cleared by a CCP (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) 2019/564

of 28 March 2019

amending Delegated Regulation (EU) 2016/2251 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council as regards the date until which counterparties may continue to apply their risk-management procedures for certain OTC derivative contracts not cleared by a CCP

(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) 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) 2019/397[(2)] provides for an amendment to Commission Delegated Regulation (EU) 2016/2251[(3)] as regards the date until which counterparties may continue to apply their risk-management procedures for certain OTC derivative contracts not cleared by a CCP. Pursuant to Article 2 of Delegated Regulation (EU) 2019/397, 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[(4)]. On 21 March 2019, the European Council agreed to an extension until 22 May 2019, 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) 2019/397 will not apply.

(4) However, the reasons underlying Delegated Regulation (EU) 2019/397 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) 2016/2251 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 Commission.

(7) It is necessary to facilitate the implementation of efficient solutions by market participants as quickly as possible. Therefore, the European Banking Authority, the European Insurance and Occupational Pensions Authority and 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 1093/2010 of the European Parliament and of the Council[(5)], the second subparagraph of Article 10(1) of Regulation (EU) No 1094/2010 of the European Parliament and of the Council[(6)] and 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

Article 35 of Delegated Regulation (EU) 2016/2251 is replaced by the following:

Article 35

Transitional provisions

1 Counterparties referred to in Article 11(3) of Regulation (EU) No 648/2012 may continue to apply the risk-management procedures that they have in place at the date of application of this Regulation in respect of non-centrally cleared OTC derivative contracts entered into or novated between 16 August 2012 and the relevant dates of application of this Regulation.

2 Counterparties referred to in Article 11(3) of Regulation (EU) No 648/2012 may also continue to apply the risk-management procedures that they have in place at 14 March 2019 in respect of non-centrally cleared OTC derivative contracts fulfilling all of the following conditions:

a the non-centrally cleared OTC derivative contracts have been entered into or novated before either the relevant dates of application of this Regulation as set out in Articles 36, 37 and 38 of this Regulation or 11 April 2019 whichever is earlier;