Changes to legislation: *There are outstanding changes not yet made to Commission Delegated Regulation (EU) 2017/2417. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)EUR 2017 No. 2417 may be subject to amendment by EU Exit Instruments made by the Financial Conduct Authority under powers set out in The Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (S.I. 2018/1115), regs. 2, 3, Sch. Pt. 1. These amendments are not currently available on legislation.gov.uk. Details of relevant amending instruments can be found on their website/s. (See end of Document for details) View outstanding changes*

Commission Delegated Regulation (EU) 2017/2417 of 17 November 2017 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on the trading obligation for certain derivatives (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) 2017/2417

of 17 November 2017

supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on the trading obligation for certain derivatives

(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 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012[(1)], and in particular Article 32(1) thereof,

Whereas:

(1) Regulation (EU) No 600/2014 provides for an obligation to trade on a regulated market, a multilateral trading facility, an organised trading facility or an equivalent third-country trading venue certain classes of derivatives, or relevant subsets thereof, which have been declared subject to the clearing obligation referred to in Article 4 of Regulation (EU) No 648/2012 of the European Parliament and of the Council[(2)]. That trading obligation should only apply to derivatives that are sufficiently liquid and available for trading on at least one trading venue.

(2) For interest rate derivatives subject to the clearing obligation, liquidity is concentrated in derivative contracts which have the most standardised characteristics. Those characteristics should therefore be taken into consideration when establishing the classes of derivatives subject to the trading obligation.

(3) Similarly, liquidity in interest rate derivatives subject to the clearing obligation is concentrated in derivative contracts having certain benchmark tenors. It is therefore appropriate to limit the trading obligation to the derivatives with those benchmark tenors. In order to distinguish derivative contracts starting immediately after the execution of the trade from derivative contracts starting at a predetermined date in the future, the tenor of a contract should be calculated based on the effective date at which the obligations under the contract come into effect. However, to adequately take into account the derivatives' liquidity pattern and to avoid circumvention of the trading obligation, it is important not to make use of benchmark tenors as strict thresholds but rather as points of reference for targeted intervals.

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(4) For credit derivatives, with respect to the two index credit default swaps that are subject to the clearing obligation, liquidity is concentrated in the current on-the-run series and the latest off-the-run series. It is therefore appropriate to limit the application of the trading obligation to derivatives belonging to those series only.

(5) Commission Delegated Regulation (EU) 2015/2205[(3)] (interest rate OTC derivatives) and Commission Delegated Regulation (EU) 2016/592[(4)] (credit OTC derivatives) identify four categories of counterparty to which the clearing obligation applies. In order to accommodate the specific needs of each category of counterparty, a phased-in application of that clearing obligation has also been laid down in those Delegated Regulations. Given the link between the clearing obligation and the trading obligation, the trading obligation for each category of counterparty should only take effect once the clearing obligation for that category has already taken effect.

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

(7) This Regulation is adopted on the basis of the facts, and in particular the prevailing liquidity, at the time of its adoption and will be reviewed and amended as appropriate in accordance with market developments.

(8) ESMA 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 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[(5)].

(9) In order to ensure the smooth functioning of the financial markets, this Regulation should enter into force as a matter of urgency and apply from the same date as the date of application of Regulation (EU) No 600/2014,

HAS ADOPTED THIS REGULATION:

Article 1

Derivatives subject to the trading obligation

The derivatives set out in the Annex shall be subject to the trading obligation referred to in Article 28 of Regulation (EU) No 600/2014.

A derivative referred to in Table 1, Table 2 and Table 3 of the Annex shall be deemed to have a tenor of 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 15, 20 or 30 years where the period of time between the date at which the obligations under that contract come into effect and the termination date of that contract equals one of those periods of time, plus or minus 5 days.

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Article 2

Dates from which the trading obligation takes effect

The trading obligation referred to in Article 28 of Regulation (EU) No 600/2014 shall, for each category of counterparties referred to in Article 3 of Delegated Regulation (EU) 2015/2205 and Article 3 of Delegated Regulation (EU) 2016/592, take effect from the later of the following dates:

(a) 3 January 2018;

(b) the date referred to in Article 3 of Delegated Regulation (EU) 2015/2205 or Article 3 of Delegated Regulation (EU) 2016/592 for that category of counterparties.

Article 3

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*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 17 November 2017.

For the Commission

The President

Jean-Claude JUNCKER

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ANNEX

Derivatives subject to the trading obligation

TABLE 1

Fixed-to-float interest rate swaps denominated in EUR

Fixed-to-Float single currency interest rate swaps – EUR EURIBOR 3 and 6M		
Settlement currency	**EUR**	**EUR**
Trade start type	Spot (T+2)	Spot (T+2)
Optionality	No	No
Tenor	2,3,4,5,6,7,8,9,10,12,15,20,30Y	2,3,4,5,6,7,10,15,20,30Y
Notional type	Constant Notional	Constant Notional
Fixed leg		
Payment frequency	Annual or semi-annual	Annual or semi-annual
Day count convention	30/360 or Actual/360	30/360 or Actual/360
Floating leg		
Reference index	EURIBOR 6M	EURIBOR 3M
Reset frequency	Semi-annual or quarterly	Quarterly
Day count convention	Actual/360	Actual/360

TABLE 2

Fixed-to-float interest rate swaps denominated in USD

Fixed-to-Float single currency interest rate swaps – USD LIBOR 3M		
Settlement currency	**USD**	**USD**
Trade start type	Spot (T+2)	IMM (next two IMM dates)
Optionality	No	No
Tenor	2,3,4,5, 6,7,10,12,15,20,30Y	2,3,4,5,6,7,10,12,15,20,30Y
Notional type	Constant Notional	Constant Notional
Fixed leg		
Payment frequency	Annual or semi-annual	Annual or semi-annual
Day count convention	30/360 or Actual/360	30/360 or Actual/360
Floating leg		
Reference index	USD LIBOR 3M	USD LIBOR 3M
Reset frequency	Quarterly	Quarterly
Day count convention	Actual/360	Actual/360
Fixed-to-Float single currency interest rate swaps – USD LIBOR 6M		
Settlement currency	**USD**	**USD**
Trade start type	Spot (T+2)	IMM (next two IMM dates)