Commission Delegated Regulation (EU) 2017/751 of 16 March 2017 amending Delegated Regulations (EU) 2015/2205, (EU) 2016/592 and (EU) 2016/1178 as regards the deadline for compliance with clearing obligations for certain counterparties dealing with OTC derivatives (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) 2017/751

of 16 March 2017

amending Delegated Regulations (EU) 2015/2205, (EU) 2016/592 and (EU) 2016/1178 as regards the deadline for compliance with clearing obligations for certain counterparties dealing with OTC 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 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 Regulations (EU) 2015/2205[(2)], (EU) 2016/592[(3)] and (EU) 2016/1178[(4)] determine 4 categories of counterparties for the purposes of setting out the dates on which their respective clearing obligations take effect. Counterparties are categorised according to their level of legal and operational capacity and by their trading activity in relation to OTC derivatives.

(2) In order to ensure a timely and orderly application of the clearing obligation, staggered phase-in periods were applied to those different categories of counterparties.

(3) The date on which the clearing obligation takes effect for counterparties within Category 3 takes into account the fact that the majority of those counterparties can only get access to a central counterparty (CCP) by becoming either a client or an indirect client of a clearing member.

(4) Counterparties with the lowest level of activity in OTC derivatives are comprised in Category 3. Recent evidence suggests that counterparties in that category face significant difficulties in the preparation of necessary arrangements for clearing those derivative contracts. This is due to complexities affecting both types of access to clearing arrangements, namely client clearing and indirect client clearing.

(5) Firstly, in relation to client clearing arrangements, there appears to be little incentive for clearing members to extensively develop their client clearing offer, because of cost issues. This is even more so for counterparties with a limited volume of activity in OTC derivatives. In addition, the regulatory framework on the capital requirements applicable to client clearing activities is being modified, which creates uncertainties

Changes to legislation: *There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2017/751. (See end of Document for details)*

that act as impediments to the development of a range of client clearing offerings by clearing members.

(6) Secondly, in relation to indirect clearing arrangements, as a result of the lack of the offer, counterparties are currently unable to access CCPs by becoming an indirect client of a clearing member.

(7) On the basis of those difficulties and in order to provide those counterparties with an additional period of time to finalise the necessary clearing arrangements it is appropriate to postpone the dates on which the clearing obligation takes effect for counterparties within Category 3. However, account has already been taken of the incentives to centralise risk management within a group in relation to intragroup transactions and the postponement of the dates has no impact on those incentives and those dates concerning certain OTC derivatives concluded between counterparties belonging to the same group.

(8) In light of the positive consequences arising from the establishment of clearing arrangements and to avoid duplication of efforts regarding the preparations to clear different asset classes subject to the clearing obligation, it is appropriate to align the new dates on which the clearing obligation takes effect for counterparties within Category 3.

(9) Delegated Regulations (EU) 2015/2205, (EU) 2016/592 and (EU) 2016/1178 should therefore be amended.

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

(11) ESMA has conducted an open public consultation on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits, requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[(5)], and consulted the European Systemic Risk Board,

HAS ADOPTED THIS REGULATION:

Article 1

Amendment to Delegated Regulation (EU) 2015/2205

In Article 3(1) of Delegated Regulation (EU) 2015/2205, point (c) is replaced by the following:

(c) 21 June 2019 for counterparties in Category 3;.

Article 2

Amendment to Delegated Regulation (EU) 2016/592

In Article 3(1) of Delegated Regulation (EU) 2016/592, point (c) is replaced by the following: