Commission Delegated Regulation (EU) 2017/323 of 20 January 2017 correcting Delegated Regulation (EU) 2016/2251 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards for risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) 2017/323

of 20 January 2017

correcting Delegated Regulation (EU) 2016/2251 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards for risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty

(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) Commission Delegated Regulation (EU) 2016/2251[(2)] was adopted on 4 October 2016 and published on 15 December 2016. It lays down the standards for the timely, accurate and appropriately segregated exchange of collateral when derivatives contracts are not cleared by a central counterparty and includes a number of detailed requirements to be met for a group to obtain the exemption from posting margin for intragroup transactions. In addition to those requirements, where one of the two counterparties in the group is domiciled in a third country for which an equivalence determination under Article 13(2) of Regulation (EU) No 648/2012 has not yet been provided, the group has to exchange variation and appropriately segregated initial margins for all the intragroup transactions with the subsidiaries in those third countries. In order to avoid a disproportionate application of the margin requirements and taking into account similar requirements for clearing obligations, the Delegated Regulation provides for a delayed implementation of that particular requirement in order to allow enough time for completion of the process to produce the equivalence determination, while not requiring an inefficient allocation of resources to the groups with subsidiaries domiciled in third countries.

(2) In Article 37 of Delegated Regulation (EU) 2016/2251, the provision on applying the phase-in of the variation margin requirements to intra-group transactions in a way analogous to the provision in Article 36(2) (which relates to initial margin requirements)

Changes to legislation: *There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2017/323. (See end of Document for details)*

is missing. Two new paragraphs should therefore be added to Article 37, which is the Article specifying the phase-in schedule for variation margin requirements. Those paragraphs should be analogous to the existing paragraphs 2 and 3 of Article 36 so that where an intragroup transaction takes place between a Union entity and a third country entity, the exchange of variation margin is not required until three years after entry into force of the Regulation where there is no equivalence decision for that third country. Where there is an equivalence decision, the requirements should apply either four months after the entry into force of the equivalence decision, or according to the general timeline, whichever is later.

(3) The draft regulatory technical standards on which Delegated Regulation (EU) 2016/2251 is based, submitted by the European Supervisory Authorities to the Commission on 8 March 2016, included the same phase-in period for both initial and variation margins. The need for the correction is due to a technical error in the process leading to the adoption of Delegated Regulation (EU) 2016/2251 where the inclusion of the two paragraphs on the phase-in of the variation margin requirements to intra-group transactions was omitted.

(4) Delegated Regulation (EU) 2016/2251 should therefore be corrected accordingly.

(5) Delegated Regulation (EU) 2016/2251 entered into force on 4 January 2017. In order to avoid any discontinuity in the application of the phase-in periods for initial and variation margins, this Regulation should enter into force as a matter of urgency with retroactive application,

HAS ADOPTED THIS REGULATION:

Article 1

In Article 37 of Delegated Regulation (EU) 2016/2251, the following paragraphs 3 and 4 are added:

3. By way of derogation from paragraph 1, where the conditions of paragraph 4 of this Article are met, Articles 9(1), 10 and 12 shall apply as follows:

a 3 years after the date of entry into force of this Regulation where no equivalence decision has been adopted pursuant to Article 13(2) of Regulation (EU) No 648/2012 for the purposes of Article 11(3) of that Regulation in respect of the relevant third country;

b the later of the following dates where an equivalence decision has been adopted pursuant to Article 13(2) of Regulation (EU) No 648/2012 for the purposes of Article 11(3) of that Regulation in respect of the relevant third country:

(i) four months 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 11(3) of that Regulation in respect of the relevant third country;

(ii) the applicable date determined pursuant to paragraph 1.

4 The derogation referred to in paragraph 3 shall only apply where counterparties to a non-centrally cleared OTC derivative contract meet all of the following conditions:

a one counterparty is established in a third country and the other counterparty is established in the Union;