**This text is meant purely as a documentation tool and has no legal effect. The Union's institutions do not assume any liability for its contents. The authentic versions of the relevant acts, including their preambles, are those published in the Official Journal of the European Union and available in EUR-Lex. Those official texts are directly accessible through the links embedded in this document**

►**B**

# COMMISSION DELEGATED REGULATION (EU) 2016/592

**of 1 March 2016**

**supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on the clearing obligation**

**(Text with EEA relevance)**

(OJ L 103, 19.4.2016, p. 5)

Amended by:

| | | Official Journal | | |
|---|---|---|---|---|
| | | No | page | date |
| ►**M1** | Commission Delegated Regulation (EU) 2017/751 of 16 March 2017 | L 113 | 15 | 29.4.2017 |

▼B

# COMMISSION DELEGATED REGULATION (EU) 2016/592

**of 1 March 2016**

**supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on the clearing obligation**

**(Text with EEA relevance)**

*Article 1*

**Classes of OTC derivatives subject to the clearing obligation**

The classes of over the counter (OTC) derivatives set out in the Annex shall be subject to the clearing obligation.

*Article 2*

**Categories of counterparties**

1. For the purposes of Articles 3 and 4, the counterparties subject to the clearing obligation shall be divided in the following categories:

(a) Category 1, comprising counterparties which, on the date of entry into force of this Regulation, are clearing members, within the meaning of Article 2(14) of Regulation (EU) No 648/2012, for at least one of the classes of OTC derivatives set out in the Annex to this Regulation, of at least one of the CCPs authorised or recognised before that date to clear at least one of those classes;

(b) Category 2, comprising counterparties not belonging to Category 1 which belong to a group whose aggregate month-end average of outstanding gross notional amount of non-centrally cleared derivatives for January, February and March 2016 is above EUR 8 billion and which are any of the following:

(i) financial counterparties;

(ii) alternative investment funds as defined in Article 4(1)(a) of Directive 2011/61/EU of the European Parliament and of the Council [1] that are non-financial counterparties;

(c) Category 3, comprising counterparties not belonging to Category 1 or Category 2 which are any of the following:

(i) financial counterparties;

(ii) alternative investment funds as defined in Article 4(1)(a) of Directive 2011/61/EU that are non-financial counterparties;

(d) Category 4, comprising non-financial counterparties that do not belong to Category 1, Category 2 or Category 3.

[1] Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

▼B

2. For the purposes of calculating the group aggregate month-end average of outstanding gross notional amount referred to in point (b) of paragraph 1, all of the group's non-centrally cleared derivatives, including foreign exchange forwards, swaps and currency swaps, shall be included.

3. Where counterparties are alternative investment funds as defined in Article 4(1)(a) of Directive 2011/61/EU or undertakings for collective investment in transferable securities as defined in Article 1(2) of Directive 2009/65/EC of the European Parliament and of the Council [1], the EUR 8 billion threshold referred to in point (b) of paragraph 1 of this Article shall apply individually at fund level.

*Article 3*

**Dates from which the clearing obligation takes effect**

1. In respect of contracts pertaining to a class of OTC derivatives set out in the Annex, the clearing obligation shall take effect on:

(a) 9 February 2017 for counterparties in Category 1;

(b) 9 August 2017 for counterparties in Category 2;

▼M1

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

▼B

(d) 9 May 2019 for counterparties in Category 4.

Where a contract is concluded between two counterparties included in different categories of counterparties, the date from which the clearing obligation takes effect for that contract shall be the later date.

2. By way of derogation from points (a), (b) and (c) of paragraph 1, in respect of contracts pertaining to a class of OTC derivatives set out in the Annex and concluded between counterparties other than counterparties in Category 4 which are part of the same group and where one counterparty is established in a third country and the other counterparty is established in the Union, the clearing obligation shall take effect on:

(a) 9 May 2019 in case no equivalence decision has been adopted pursuant to Article 13(2) of Regulation (EU) No 648/2012 for the purposes of Article 4 of that Regulation covering the OTC derivative contracts set out in the Annex to this Regulation in respect of the relevant third country; or

(b) the later of the following dates in case an equivalence decision has been adopted pursuant to Article 13(2) of Regulation (EU) No 648/2012 for the purposes of Article 4 of that Regulation covering the OTC derivative contracts set out in the Annex to this Regulation in respect of the relevant third country:

[1] Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).

▼B

(i) 60 days 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 4 of that Regulation covering the OTC derivative contracts set out in the Annex to this Regulation in respect of the relevant third country;

(ii) the date when the clearing obligation takes effect pursuant to paragraph 1.

This derogation shall only apply where the counterparties fulfil the following conditions:

(a) the counterparty established in a third country is either a financial counterparty or a non-financial counterparty;

(b) the counterparty established in the Union is:

(i) a financial counterparty, a non-financial counterparty, a financial holding company, a financial institution or an ancillary services undertaking subject to appropriate prudential requirements and the counterparty referred to in point (a) is a financial counterparty;

(ii) either a financial counterparty or a non-financial counterparty and the counterparty referred to in point (a) is a non-financial counterparty;

(c) both counterparties are included in the same consolidation on a full basis in accordance to Article 3(3) of Regulation (EU) No 648/2012;

(d) both counterparties are subject to appropriate centralised risk evaluation, measurement and control procedures;

(e) the counterparty established in the Union has notified its competent authority in writing that the conditions laid down in points (a), (b), (c) and (d) are met and, within 30 calendar days after receipt of the notification, the competent authority has confirmed that those conditions are met.

*Article 4*

**Minimum remaining maturity**

1. For financial counterparties in Category 1, 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) 5 years and 3 months for contracts entered into or novated before 9 October 2016 that belong to the classes in the table set out in the Annex;

(b) 6 months for contracts entered into or novated on or after 9 October 2016 that belong to the classes in the table of the Annex.

2. For financial counterparties in Category 2, 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:

▼B

(a) 5 years and 3 months for contracts entered into or novated before 9 October 2016 that belong to the classes in the table set out in the Annex;

(b) 6 months for contracts entered into or novated on or after 9 October 2016 that belong to the classes in the table set out in the Annex.

3. For financial counterparties in Category 3 and for transactions referred to in Article 3(2) 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.

4. Where a contract is concluded between two financial counterparties belonging to different categories or between two financial counterparties involved in transactions referred to in Article 3(2), the minimum remaining maturity to be taken into account for the purposes of this Article shall be the longer remaining maturity applicable.

*Article 5*

**Entry into force**

This Regulation shall enter into force on the twentieth 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.

▼B

*ANNEX*

**Credit Default OTC derivatives classes subject to the clearing obligation**

***European untranched Index CDS Classes***

| id | Type | Sub-type | Geographical Zone | Reference Index | Settlement Currency | Series | Tenor |
|---|---|---|---|---|---|---|---|
| B.1.1 | Index CDS | Untranched Index | Europe | iTraxx Europe Main | EUR | 17 onwards | 5Y |
| B.1.2 | Index CDS | Untranched Index | Europe | iTraxx Europe Crossover | EUR | 17 onwards | 5Y |