

Chapter 1

Commission Delegated Regulation (EU) 2016/2251

Article 31 Treatment of derivatives with
counterparties in third countries where
legal enforceability of netting agreements
or collateral protection cannot be ensured

(1) By way of derogation from Article 2(2), counterparties established in the United Kingdom may provide in their risk management procedures that variation and initial margins are not required to be posted for non-centrally cleared OTC derivative contracts concluded with counterparties established in a third country for which any of the following apply:

(a) the legal review referred to in Article 2(3) confirms that the netting agreement and, where used, the exchange of collateral agreement cannot be legally enforced with certainty at all times;

(b) the legal review referred to in Article 19(6) confirms that the segregation requirements referred to in Article 19(3), (4) and (5) cannot be met.

For the purposes of the first subparagraph, counterparties established in the United Kingdom shall collect margin on a gross basis.

(2) By way of derogation from Article 2(2), counterparties established in the United Kingdom may provide in their risk management procedures that variation and initial margins are not required to be posted or collected for contracts concluded with counterparties established in a third country where all of the following conditions apply:

(a) points (a) and, where applicable, point (b) of paragraph 1 apply;

(b) the legal reviews referred to in points (a) and (b) of paragraph 1 confirm that collecting collateral in accordance with this Regulation is not possible, even on a gross basis;

(c) the ratio calculated in accordance with paragraph 3 is lower than 2,5 %.

(3) The ratio referred to in paragraph 2(c) shall be the result of dividing the amount resulting from point (a) of this paragraph with that resulting from point (b):

(a) the sum of the notional amounts of any outstanding OTC derivative contracts of the group to which the counterparty belongs that were concluded after the entry into force of this Regulation and for which no margin has been collected from counterparties established in a third country for which point (b) of paragraph 2 applies;

(b) the sum of the notional amounts of all outstanding OTC derivative contracts of the group to which the counterparty belongs, excluding OTC derivative contracts that are intragroup transactions.