

Chapter 1

Commission Delegated Regulation (EU) 2020/447

Preamble

THE EUROPEAN COMMISSION,
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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, and in particular Article 4(6) thereof,

01/01/2021

Whereas:

(1) Regulation (EU) 2017/2402 of the European Parliament and the Council amended Regulation (EU) No 648/2012 to insert into that Regulation certain conditions under which OTC derivative contracts concluded by covered bond entities in connection with covered bonds, and OTC derivative contracts concluded by securitisation special purpose entities in connection with securitisations, can be exempted from the clearing obligation.

(2) Commission Delegated Regulations (EU) 2015/2205 and 2016/1178 already contain a number of conditions under which OTC derivative contracts concluded by a covered bond entity in connection with a covered bond can be excluded from the clearing obligation.

(3) There is a degree of substitutability between OTC derivative contracts concluded by covered bond entities in connection with covered bonds, on the one hand, and OTC derivative contracts concluded by securitisation special purpose entities in connection with securitisations, on the other hand. In order to avoid potential distortion or arbitrage, their treatment toward the clearing obligation should be consistent.

(4) It is therefore appropriate, also in the light of the amendment to Regulation (EU) No 648/2012 by Regulation (EU) 2017/2402, to remove from Delegated Regulations (EU) 2015/2205 and (EU) 2016/1178 all conditions under which OTC derivative contracts concluded by a covered bond entity in connection with a covered bond can be excluded from the clearing obligation, and to insert those conditions in a new Delegated Regulation which also contains conditions under which OTC derivative contracts concluded by a securitisation special purpose entity in connection with a securitisation can be excluded from that clearing obligation.

(5) Delegated Regulation (EU) 2015/2205 and Delegated Regulation (EU) 2016/1178 should therefore be amended accordingly.

(6) This Regulation is based on the draft regulatory technical standards submitted by the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority to the European Commission.

(7) The European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority have conducted open public consultations on the draft regulatory technical standards on which this Regulation is based and have analysed the potential related costs and benefits. The European Supervisory Authorities have also requested the opinion of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council, the opinion of the Insurance and Reinsurance Stakeholder Group and the Occupational Pensions Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council, and 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,

HAS ADOPTED THIS REGULATION: