

Chapter 5

Commission Delegated Regulation (EU) 2017/2417

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 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012, and in particular Article 32(1) thereof,

01/01/2021

Whereas:

(1) Regulation (EU) No 600/2014 provides for an obligation to trade on a regulated market, a multilateral trading facility, an organised trading facility or an equivalent third-country trading venue certain classes of derivatives, or relevant subsets thereof, which have been declared subject to the clearing obligation referred to in Article 4 of Regulation (EU) No 648/2012 of the European Parliament and of the Council. That trading obligation should only apply to derivatives that are sufficiently liquid and available for trading on at least one trading venue.

(2) For interest rate derivatives subject to the clearing obligation, liquidity is concentrated in derivative contracts which have the most standardised characteristics. Those characteristics should therefore be taken into consideration when establishing the classes of derivatives subject to the trading obligation.

(3) Similarly, liquidity in interest rate derivatives subject to the clearing obligation is concentrated in derivative contracts having certain benchmark tenors. It is therefore appropriate to limit the trading obligation to the derivatives with those benchmark tenors. In order to distinguish derivative contracts starting immediately after the execution of the trade from derivative contracts starting at a predetermined date in the future, the tenor of a contract should be calculated based on the effective date at which the obligations under the contract come into effect. However, to adequately take into account the derivatives' liquidity pattern and to avoid circumvention of the trading obligation, it is important not to make use of benchmark tenors as strict thresholds but rather as points of reference for targeted intervals.

(4) For credit derivatives, with respect to the two index credit default swaps that are subject to the clearing obligation, liquidity is concentrated in the current on-the-run series

and the latest off-the-run series. It is therefore appropriate to limit the application of the trading obligation to derivatives belonging to those series only.

(5) Commission Delegated Regulation (EU) 2015/2205 (interest rate OTC derivatives) and Commission Delegated Regulation (EU) 2016/592 (credit OTC derivatives) identify four categories of counterparty to which the clearing obligation applies. In order to accommodate the specific needs of each category of counterparty, a phased-in application of that clearing obligation has also been laid down in those Delegated Regulations. Given the link between the clearing obligation and the trading obligation, the trading obligation for each category of counterparty should only take effect once the clearing obligation for that category has already taken effect.

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

(7) This Regulation is adopted on the basis of the facts, and in particular the prevailing liquidity, at the time of its adoption and will be reviewed and amended as appropriate in accordance with market developments.

(8) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested 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.

(9) In order to ensure the smooth functioning of the financial markets, this Regulation should enter into force as a matter of urgency and apply from the same date as the date of application of Regulation (EU) No 600/2014,

HAS ADOPTED THIS REGULATION: