

Chapter 32

Commission Delegated Regulation (EU) 2017/592

Article 5 Transactions qualifying as reducing risks

(1) For the purposes of point (b) of the fifth subparagraph of Article 2(4) of Directive 2014/65/EU, a transaction in derivatives shall be considered objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity when one or more of the following criteria is met:

(a) the transaction reduces the risks arising from the potential change in the value of assets, services, inputs, products, commodities or liabilities that the person or its group owns, produces, manufactures, processes, provides, purchases, merchandises, leases, sells, or incurs or reasonably anticipates owning, producing, manufacturing, processing, providing, purchasing, merchandising, leasing, selling or incurring in the normal course of its business;

(b) the transaction covers the risks arising from the potential indirect impact on the value of assets, services, inputs, products, commodities or liabilities referred to in point (a), resulting from fluctuation of interest rates, inflation rates, foreign exchange rates or credit risk;

(c) the transaction qualifies as a hedging contract pursuant to International Financial Reporting Standards adopted in accordance with Article 3 of Regulation (EC) No 1606/2002 of the European Parliament and of the Council.

(2) For the purposes of paragraph 1, a qualifying risk-reducing transaction taken on its own or in combination with other derivatives is one for which a non-financial entity:

(a) describes the following in its internal policies:

(i) the types of commodity derivative, emission allowance or derivative thereof contracts included in the portfolios used to reduce risks directly relating to commercial activity or treasury financing activity and their eligibility criteria;

(ii) the link between the portfolio and the risks that the portfolio is mitigating;

(iii) the measures adopted to ensure that the transactions concerning those contracts serve no other purpose than covering risks directly related to the commercial activity or the treasury financing activity of the non-financial entity, and that any transaction serving a different purpose can be clearly identified;

(b) is able to provide a sufficiently disaggregate view of the portfolios in terms of class of commodity derivative, emission allowance or derivative thereof, underlying commodity, time horizon and any other relevant factors.