

Draft RTS

Amending Delegated Regulation (EU) 2016/2251 on risk-mitigation techniques for OTC-derivative contracts not cleared by a CCP under Article 11(15) of EMIR the view to extending it to OTC derivative contracts concluded in the context of specific types of securitisations, following Regulation (EU) 2017/2402

EBA, London 31st May 2018

Regulation (EU) 2017/2402 - Securitisation Regulation

- Article 42 amends EMIR articles:
 - Article 4 the paragraphs 5 and 6 – **Clearing Obligation:**
 - ▶ “6. In order to ensure consistent application of this Article, and taking into account the need to prevent regulatory arbitrage, the ESAs shall develop draft regulatory technical standards specifying criteria for establishing which arrangements under covered bonds or securitisations adequately mitigate counterparty credit risk, within the meaning of paragraph 5.”

Amendment to DR (EU) 2015/2205 and 2016/1178 on Clearing Obligation (led by ESMA – separate CP)

- Article 11(15) – **OTC derivatives not cleared:**
 - ▶ “The level and type of collateral required with respect to OTC derivative contracts that are concluded by covered bond entities in connection with a covered bond, or by a securitisation special purpose entity in connection with a securitisation within the meaning of this Regulation and meeting the conditions of Article 4(5) of this Regulation and the requirements of Articles 19 to 22 or Articles 23 to 26 and Article 18 of Regulation the Securitisation Regulation shall be determined taking into account any impediments faced in exchanging collateral with respect to existing collateral arrangements under the covered bond or securitisation.”




Amendment to Delegated Regulation (EU) 2016/2251 on risk-mitigation techniques for OTC-derivative contracts not cleared

*The ESAs shall submit those draft regulatory technical standards to the Commission **by 18 July 2018***

EMIR Review

- EC proposal:

Add threshold to FC (i.e. FC+/-) and classify SSPEs as FC 

SSPEs as FC(-) are subject to EMIR requirement for OTC derivatives not cleared (Delegated Regulation (EU) 2016/2251)

- Council removed EC proposal to classify SSPEs as FC



“Status quo”



SSPEs = NFC



i.e. marginal application of this amendment, due to the fact that SSPEs are generally NFC-

- Implication for the CP:

Overall, the EMIR Review discussion will affect the scope of application of the exemptions suggested in this CP, but it will not affect the policy suggested nor the condition for its application

Regulation (EU) 2017/2402 - Recital 41

“There is a degree of **substitutability between covered bonds and securitisations**. Therefore, in order to **prevent the possibility of distortion or arbitrage between the use of securitisations and covered bonds** because of the different treatment of OTC derivative contracts entered into by covered bond entities or by SSPEs, Regulation (EU) No 648/2012 should be amended to ensure consistency of treatment between derivatives associated with covered bonds and derivatives associated with securitisations, with regard to the clearing obligation and the margin requirements on non-centrally cleared OTC derivatives”.

Delegated Regulation (EU) 2016/2251 – CB & draft

Securitisation treatment

Article 30 - Treatment of derivatives associated to covered bonds for hedging purposes

1. By way of derogation from Article 2(2) and where the conditions set out in paragraph 2 of this Article are met, counterparties may, in their risk management procedures, provide the following in relation to OTC derivative contracts concluded in connection with covered bonds:

(a) variation margin is not posted by the covered bond issuer or cover pool but is collected from its counterparty in cash and returned to its counterparty when due;

(b) initial margin is not posted or collected.

(draft) Article 30a - Treatment of derivatives associated to securitisation for hedging purposes

1. With respect to OTC derivatives contracts that are concluded by a securitization special purpose entity in connection with a securitization within the meaning of Regulation (EU) 2017/2402 and meeting the conditions of Article 4(5) of this Regulation (EU) 2012/648, by way of derogation from Article 2(2), where the conditions set out in paragraph 2 of this Article are met, counterparties may provide in their risk management procedures the following:

(a) that variation margin is not posted by the securitisation special purpose entity but that it is collected from its counterparty in cash and returned to its counterparty when due;

(b) that initial margin is not posted or collected.

Delegated Regulation (EU) 2016/2251 – CB & draft Securitisation conditions (1 of 2)

Article 30 - Treatment of derivatives associated to covered bonds for hedging purposes

2. Paragraph 1 applies where all of the following conditions are met:

(a) the OTC derivative contract is not terminated in case of resolution or insolvency of the covered bond issuer or cover pool; *n.a. to STS Sec*

(b) the counterparty to the OTC derivative concluded with covered bond issuers or with cover pools for covered bonds ranks at least pari passu with the covered bond holders except where the counterparty to the OTC derivative concluded with covered bond issuers or with cover pools for covered bonds is the defaulting or the affected party, or waives the pari passu rank;

Adapted for STS Sec (cond. "a" in 30a(2))

(c) the OTC derivative contract is registered or recorded in the cover pool of the covered bond in accordance with national covered bond legislation;

n.a. to STS Sec

(draft) Article 30a - Treatment of derivatives associated to securitisation for hedging purposes

2. Paragraph 1 applies where all of the following conditions are met:

(a) the counterparty to the OTC derivative concluded with the securitisation special purpose entity in connection with the securitisation ranks at least pari passu with the holders of the most senior securitisation note. This condition applies only where the counterparty to the OTC derivative concluded with the securitisation special purpose entity in connection to the securitisation is neither the defaulting nor the affected party;

Delegated Regulation (EU) 2016/2251 – CB & draft Securitisation conditions (2 of 2)

Article 30 - Treatment of derivatives associated to covered bonds for hedging purposes

2. Paragraph 1 applies where all of the following conditions are met:

(d) the OTC derivative contract is used only to hedge the interest rate or currency mismatches of the cover pool in relation to the covered bond;

n.a. to STS Sec (already as condition in Article 4(5) EMIR)

(e) the netting set does not include OTC derivative contracts unrelated to the cover pool of the covered bond; *(cond. "c" 30a(2))*

(f) the covered bond to which the OTC derivative contract is associated meets the requirements of paragraphs (1), (2) and (3) of Article 129 of Regulation (EU) No 575/2013; *n.a. to STS Sec*

(g) the cover pool of the covered bond to which the OTC derivative contract is associated is subject to a regulatory collateralisation requirement of at least 102 %. *Adapted for STS Sec (cond. "b" in 30a(2))*

(draft) Article 30a - Treatment of derivatives associated to securitisation for hedging purposes

2. Paragraph 1 applies where all of the following conditions are met:

(b) the securitisation special purpose entity in connection with the securitisation to which the OTC derivatives contract is associated is subject to a level of credit enhancement of the most senior securitisation note of at least 2 % of the outstanding notes on an ongoing basis;

(c) the netting set does not include OTC derivative contracts unrelated to the securitisation.



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