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ANNEX 2

ANNEX

to the

Proposal for a Council Decision

on the position to be adopted, on behalf of the European Union, within the EEA Joint Committee concerning an amendment to Annex IX (Financial Services) to the EEA Agreement

(EMIR Level 2 Acts)

ANNEX

DECISION OF THE EEA JOINT COMMITTEE

No

of

amending Annex IX (Financial services) to the EEA Agreement

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area ("the EEA Agreement"), and in particular Article 98 thereof,

Whereas:

(1) Commission Delegated Regulation (EU) 2015/1515 of 5 June 2015 amending Regulation (EU) No 648/2012 of the European Parliament and of the Council as regards the extension of the transitional periods related to pension scheme arrangements[1] is to be incorporated into the EEA Agreement.

(2) Commission Delegated Regulation (EU) 2015/2205 of 6 August 2015 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on the clearing obligation[2] is to be incorporated into the EEA Agreement.

(3) Commission Delegated Regulation (EU) 2016/592 of 1 March 2016 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on the clearing obligation[3] is to be incorporated into the EEA Agreement.

(4) Commission Delegated Regulation (EU) 2016/1178 of 10 June 2016 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on the clearing obligation[4], as corrected by OJ L 196, 21.7.2016, p. 56, is to be incorporated into the EEA Agreement.

(5) Commission Delegated Regulation (EU) 2017/104 of 19 October 2016 amending Delegated Regulation (EU) No 148/2013 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards on the minimum details of the data to be reported to trade repositories[5] is to be incorporated into the EEA Agreement.

(6) Commission Delegated Regulation (EU) 2017/751 of 16 March 2017 amending Delegated Regulations (EU) 2015/2205, (EU) 2016/592 and (EU) 2016/1178 as

1 OJ L 239, 15.9.2015, p. 63.
2 OJ L 314, 1.12.2015, p. 13.
3 OJ L 103, 19.4.2016, p. 5.
4 OJ L 195, 20.7.2016, p. 3.
5 OJ L 17, 21.1.2017, p. 1.

regards the deadline for compliance with clearing obligations for certain counterparties dealing with OTC derivatives[6] is to be incorporated into the EEA Agreement.

(7) Commission Implementing Regulation (EU) 2017/105 of 26 October 2016 amending Implementing Regulation (EU) No 1247/2012 laying down implementing technical standards with regard to the format and frequency of trade reports to trade repositories according to Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories[7], as corrected by OJ L 19, 25.1.2017, p. 97, is to be incorporated into the EEA Agreement.

(8) Annex IX to the EEA Agreement should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Annex IX to the EEA Agreement shall be amended as follows:

1. The following indent is inserted in point 31bc (Regulation (EU) No 648/2012 of the European Parliament and of the Council):

'- **32015 R 1515**: Commission Delegated Regulation (EU) 2015/1515 of 5 June 2015 (OJ L 239, 15.9.2015, p. 63).'

2. The text of point 31bcb (Commission Implementing Regulation (EU) No 1247/2012) is replaced by the following:

'**32012 R 1247**: Commission Implementing Regulation (EU) No 1247/2012 of 19 December 2012 laying down implementing technical standards with regard to the format and frequency of trade reports to trade repositories according to Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories (OJ L 352, 21.12.2012, p. 20), as amended by:

- **32017 R 0105**: Commission Implementing Regulation (EU) 2017/105 of 26 October 2016 (OJ L 17, 21.1.2017, p. 17), as corrected by OJ L 19, 25.1.2017, p. 17.

The provisions of the Implementing Regulation shall, for the purposes of this Agreement, be read with the following adaptations:

(a) In Article 4(5) and Article 4b, as regards the EFTA States, the words "in the EEA" shall be inserted after the words "date of application".

(b) In Article 5, as regards the EFTA States:

(i) paragraphs 1 and 2 shall read as follows:

"1. Derivative contracts shall be reported:

(a) Within six months of the date of entry into force of Decision of the EEA Joint Committee No …/… of … [JCD 32013R0148.A09], where a trade repository for that particular derivative class has been registered under Article 55 of Regulation (EU) No 648/2012 before the date of entry into force of Decision of the EEA Joint Committee No …/… of … [JCD 32013R0148.A09];

[6] OJ L 113, 29.4.2017, p. 15.
[7] OJ L 17, 21.1.2017, p. 17.

(b) 90 days after the registration of a trade repository for a particular derivative class under Article 55 of Regulation (EU) No 648/2012, where there is no trade repository registered for that particular derivative class before or on the date of entry into force of Decision of the EEA Joint Committee No …/… of … [JCD 32013R0148.A09], but in any event no earlier than six months after the date of entry into force of Decision of the EEA Joint Committee No …/… of … [JCD 32013R0148.A09];

(c) Within six months of the date of entry into force of Decision of the EEA Joint Committee No …/… of … [JCD 32013R0148.A09], where there is no trade repository registered for that particular derivative class under Article 55 of Regulation (EU) No 648/2012 six months after the date of entry into force of Decision of the EEA Joint Committee No…/…of … [JCD 32013R0148.A09]. The reporting obligation shall commence on this date and contracts shall be reported to ESMA in accordance with Article 9(3) of that Regulation until a trade repository is registered for that particular derivative class.";

(ii) in paragraphs 3 and 4, the words "16 August 2012" shall read "1 July 2017".'

3. The following shall be inserted in point 31bce (Commission Delegated Regulation (EU) No 148/2013), with effect from … [insert: nine months after the date of entry into force of this Decision]:

', as amended by:

- **32017 R 0104**: Commission Delegated Regulation (EU) 2017/104 of 19 October 2016 (OJ L 17, 21.1.2017, p. 1).'

4. The following is added after point 31bco (Commission Delegated Regulation (EU) No 667/2014):

'31bcp. **32015 R 2205**: Commission Delegated Regulation (EU) 2015/2205 of 6 August 2015 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on the clearing obligation (OJ L 314, 1.12.2015, p. 13), as amended by:

- **32017 R 0751**: Commission Delegated Regulation (EU) 2017/751 of 16 March 2017 (OJ L 113, 29.4.2017, p. 15).

The provisions of the Delegated Regulation shall, for the purposes of this Agreement, be read with the following adaptations:

(a) In point (b) of Article 2(1), as regards the EFTA States, the words "January, February and March 2016" shall read "January, February and March …[insert: year of entry into force of this Decision]".

(b) In Article 3:

(i) as regards the EFTA States, the first subparagraph of paragraph 1 shall read as follows:

"In respect of contracts pertaining to a class of OTC derivatives set out in the Annex, the clearing obligation shall take effect:

(a) six months after the date of entry into force of Decision of the EEA Joint Committee No …/… of … [this decision] for counterparties in Category 1;

(b) one year after the date of entry into force of Decision of the EEA Joint Committee No …/… of … [this decision] for counterparties in Category 2;

(c) 21 June 2019 for counterparties in Category 3;

(d) two years after the date of entry into force of Decision of the EEA Joint Committee No …/… of … [this decision] for counterparties in Category 4.";

(ii) in the second subparagraph of paragraph 1, the words ", or between one counterparty established in an EFTA State and one counterparty established in an EU Member State" shall be inserted after the words "between two counterparties included in different categories of counterparties";

(iii) as regards the EFTA States, the first subparagraph of paragraph 2 shall read as follows:

"By way of derogation from points (a), (b) and (c) of paragraph 1, in respect of contracts pertaining to a class of OTC derivatives set out in the Annex and concluded between counterparties other than counterparties in Category 4 which are part of the same group and where one counterparty is established in a third country and the other counterparty is established in the EEA, the clearing obligation shall take effect:

(a) two years after the date of entry into force of Decision of the EEA Joint Committee No …/… of … [this decision] in case no equivalence decision adopted pursuant to Article 13(2) of Regulation (EU) No 648/2012 for the purposes of Article 4 of that Regulation covering the OTC derivative contracts referred to in the Annex to this Regulation in respect of the relevant third country applies in the EEA; or

(b) the later of the following dates in case an equivalence decision adopted pursuant to Article 13(2) of Regulation (EU) No 648/2012 for the purposes of Article 4 of that Regulation covering the OTC derivative contracts referred to in the Annex to this Regulation in respect of the relevant third country applies in the EEA:

(i) 60 days after the date of entry into force of the decision of the EEA Joint Committee containing the decision adopted pursuant to Article 13(2) of Regulation (EU) No 648/2012 for the purposes of Article 4 of that Regulation covering the OTC derivative contracts referred to in the Annex to this Regulation in respect of the relevant third country;

(ii) the date when the clearing obligation takes effect pursuant to paragraph 1.".

(c) In Article 4:

(i) in paragraph 1, as regards the EFTA States, the words "21 February 2016" shall read "two months after the date of entry into force of Decision of the EEA Joint Committee No …/… of … [this decision]";

(ii) in paragraph 2, as regards the EFTA States, the words "21 May 2016" shall read "five months after the date of entry into force of Decision of the EEA Joint Committee No …/… of … [this decision]";

(iii) in paragraph 4, the words ", between one financial counterparty established in an EFTA State and one financial counterparty established in an EU Member State" shall be inserted after the words "between two financial counterparties belonging to different categories".

31bcq. **32016 R 0592**: Commission Delegated Regulation (EU) 2016/592 of 1 March 2016 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on the clearing obligation (OJ L 103, 19.4.2016, p. 5), as amended by:

- **32017 R 0751**: Commission Delegated Regulation (EU) 2017/751 of 16 March 2017 (OJ L 113, 29.4.2017, p. 15).

The provisions of the Delegated Regulation shall, for the purposes of this Agreement, be read with the following adaptations:

(a) In point (b) of Article 2(1), as regards the EFTA States, the words "January, February and March 2016" shall read "January, February and March …[insert: year of entry into force of this Decision]".

(b) In Article 3:

(i) as regards the EFTA States, the first subparagraph of paragraph 1 shall read as follows:

"In respect of contracts pertaining to a class of OTC derivatives set out in the Annex, the clearing obligation shall take effect:

(a) one year after the date of entry into force of Decision of the EEA Joint Committee No …/… of … [this decision] for counterparties in Category 1;

(b) eighteen months after the date of entry into force of Decision of the EEA Joint Committee No …/… of … [this decision] for counterparties in Category 2;

(c) 21 June 2019 for counterparties in Category 3;

(d) thirty-nine months after the date of entry into force of Decision of the EEA Joint Committee No …/… of … [this decision] for counterparties in Category 4.";

(ii) in the second subparagraph of paragraph 1, the words ", or between one counterparty established in an EFTA State and one counterparty established in an EU Member State" shall be inserted

after the words “between two counterparties included in different categories of counterparties”;

(iii) as regards the EFTA States, the first subparagraph of paragraph 2 shall read as follows:

“By way of derogation from points (a), (b) and (c) of paragraph 1, in respect of contracts pertaining to a class of OTC derivatives set out in the Annex and concluded between counterparties other than counterparties in Category 4 which are part of the same group and where one counterparty is established in a third country and the other counterparty is established in the EEA, the clearing obligation shall take effect:

(a) thirty-nine months after the date of entry into force of Decision of the EEA Joint Committee No …/… of … [this decision] in case no equivalence decision adopted pursuant to Article 13(2) of Regulation (EU) No 648/2012 for the purposes of Article 4 of that Regulation covering the OTC derivative contracts set out in the Annex to this Regulation in respect of the relevant third country applies in the EEA; or

(b) the later of the following dates in case an equivalence decision adopted pursuant to Article 13(2) of Regulation (EU) No 648/2012 for the purposes of Article 4 of that Regulation covering the OTC derivative contracts set out in the Annex to this Regulation in respect of the relevant third country applies in the EEA:

(i) 60 days after the date of entry into force of the decision of the EEA Joint Committee containing the decision adopted pursuant to Article 13(2) of Regulation (EU) No 648/2012 for the purposes of Article 4 of that Regulation covering the OTC derivative contracts set out in the Annex to this Regulation in respect of the relevant third country;

(ii) the date when the clearing obligation takes effect pursuant to paragraph 1.”.

(c) In Article 4:

(i) in paragraphs 1 and 2, as regards the EFTA States, the words “9 October 2016” shall read “five months after the date of entry into force of Decision of the EEA Joint Committee No …/… of … [this decision]”;

(ii) in paragraph 4, the words “, between one financial counterparty established in an EFTA State and one financial counterparty established in an EU Member State” shall be inserted after the words “between two financial counterparties belonging to different categories”.

31bcr. **32016 R 1178**: Commission Delegated Regulation (EU) 2016/1178 of 10 June 2016 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on the clearing

obligation (OJ L 195, 20.7.2016, p. 3), as corrected by OJ L 196, 21.7.2016, p. 56, as amended by:

- **32017 R 0751**: Commission Delegated Regulation (EU) 2017/751 of 16 March 2017 (OJ L 113, 29.4.2017, p. 15).

The provisions of the Delegated Regulation shall, for the purposes of this Agreement, be read with the following adaptations:

(a) In point (b) of Article 2(1), as regards the EFTA States, the words "January, February and March 2016" shall read "January, February and March …[insert: year of entry into force of this Decision]".

(b) In Article 3:

(i) as regards the EFTA States, the first subparagraph of paragraph 1 shall read as follows:

"In respect of contracts pertaining to a class of OTC derivatives set out in Annex I, the clearing obligation shall take effect:

(a) six months after the date of entry into force of Decision of the EEA Joint Committee No …/… of … [this decision] for counterparties in Category 1;

(b) one year after the date of entry into force of Decision of the EEA Joint Committee No …/… of … [this decision] for counterparties in Category 2;

(c) 21 June 2019 for counterparties in Category 3;

(d) two years after the date of entry into force of Decision of the EEA Joint Committee No …/… of … [this decision] for counterparties in Category 4.";

(ii) in the second subparagraph of paragraph 1, the words ", or between one counterparty established in an EFTA State and one counterparty established in an EU Member State" shall be inserted after the words "between two counterparties included in different categories of counterparties";

(iii) as regards the EFTA States, the first subparagraph of paragraph 2 shall read as follows:

"By way of derogation from points (a), (b) and (c) of paragraph 1, in respect of contracts pertaining to a class of OTC derivatives set out in Annex I and concluded between counterparties other than counterparties in Category 4 which are part of the same group and where one counterparty is established in a third country and the other counterparty is established in the EEA, the clearing obligation shall take effect:

(a) two years after the date of entry into force of Decision of the EEA Joint Committee No …/… of … [this decision] in case no equivalence decision adopted pursuant to Article 13(2) of Regulation (EU) No 648/2012 for the purposes of Article 4 of that Regulation covering the OTC derivative contracts set out

in Annex I of this Regulation in respect of the relevant third country applies in the EEA; or

(b) the later of the following dates in case an equivalence decision adopted pursuant to Article 13(2) of Regulation (EU) No 648/2012 for the purposes of Article 4 of that Regulation covering the OTC derivative contracts set out in Annex I of this Regulation in respect of the relevant third country applies in the EEA:

(i) 60 days after the date of entry into force of the decision of the EEA Joint Committee containing the decision adopted pursuant to Article 13(2) of Regulation (EU) No 648/2012 for the purposes of Article 4 of that Regulation covering the OTC derivative contracts set out in Annex I of this Regulation in respect of the relevant third country;

(ii) the date when the clearing obligation takes effect pursuant to paragraph 1.".

(c) In Article 4:

(i) in paragraphs 1 and 2, as regards the EFTA States, the words "9 October 2016" shall read "two months after the date of entry into force of Decision of the EEA Joint Committee No …/… of … [this decision]";

(ii) in paragraph 4, the words ", between one financial counterparty established in an EFTA State and one financial counterparty established in an EU Member State" shall be inserted after the words "between two financial counterparties belonging to different categories".'

Article 2

The texts of Delegated Regulations (EU) 2015/1515, (EU) 2015/2205, (EU) 2016/592, (EU) 2016/1178, as corrected by OJ L 196, 21.7.2016, p. 56, (EU) 2017/104, and (EU) 2017/751 and Implementing Regulation (EU) 2017/105, as corrected by OJ L 19, 25.1.2017, p. 97, in the Icelandic and Norwegian languages, to be published in the EEA Supplement to the *Official Journal of the European Union*, shall be authentic.

Article 3

This Decision shall enter into force on […], provided that all the notifications under Article 103(1) of the EEA Agreement have been made[*].

Article 4

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

[*] [No constitutional requirements indicated.] [Constitutional requirements indicated.]

Done at Brussels, .

For the EEA Joint Committee
The President

The Secretaries
to the EEA Joint Committee