

COMMISSION IMPLEMENTING DECISION (EU) 2016/2270**of 15 December 2016****on the equivalence of approved exchanges in Singapore in accordance with Regulation (EU) No 648/2012 of the European Parliament and of the Council****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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 ⁽¹⁾, and in particular Article 2a(2) thereof,

Whereas:

- (1) Regulation (EU) No 648/2012 lays down clearing and bilateral risk-management requirements for over-the-counter ('OTC') derivative contracts as well as reporting requirements for such contracts. Point (7) of Article 2 of Regulation (EU) No 648/2012 defines OTC derivatives as derivative contracts the execution of which does not take place on a regulated market within the meaning of point (14) of Article 4(1) of Directive 2004/39/EC of the European Parliament and of the Council ⁽²⁾ or on a third country market considered as equivalent to a regulated market in accordance with Article 2a of Regulation (EU) No 648/2012. Therefore, any derivative contract the execution of which takes place on a third country market not deemed equivalent to regulated markets are classified as OTC for the purposes of Regulation (EU) No 648/2012.
- (2) In accordance with Article 2a of Regulation (EU) No 648/2012, a third-country market is considered equivalent to a regulated market where it complies with legally binding requirements which are equivalent to the requirements laid down in Title III of Directive 2004/39/EC and is subject to effective supervision and enforcement in that third country on an ongoing basis.
- (3) In order for a third country market to be considered equivalent to a regulated market within the meaning of Directive 2004/39/EC, the substantive outcome of the applicable legally binding requirements and supervisory and enforcement arrangements should be equivalent to Union requirements in respect of the regulatory objectives they achieve. The purpose of this equivalence assessment is therefore to verify that the legally binding requirements which apply to approved exchanges in Singapore are equivalent to the requirements laid down in Title III of Directive 2004/39/EC, and that those markets are subject to effective supervision and enforcement on an ongoing basis. Markets which are approved exchanges on the date of adoption of this Decision should be therefore identified as markets considered equivalent to a regulated market within the meaning of Directive 2004/39/EC.
- (4) The Singaporean legal framework for approved exchanges consists of the Securities and Futures Act (SFA), Securities and Futures (Markets) Regulations 2005, Securities and Futures (Corporate Governance of Approved Exchanges, Approved Clearing Houses and Approved Holding Companies) Regulations 2005, Securities and Futures (Offers of Investments) (Shares and Debentures) Regulations 2005, Securities and Futures (Licensing and Conduct of Business) Regulations 2004 and the Guidelines issued by the Monetary Authority of Singapore (MAS) pursuant to section 321 of the SFA, including the Guidelines on the Regulation of Markets No SFA 02-G01 and the Guidelines on Fit and Proper Criteria No FSG-G01. The Guidelines on the Regulation of Markets set out obligations for the approved exchanges such as the obligation to operate a fair, orderly and transparent market. Section 321(5) of the SFA sets out that failure to comply with any guidelines may, in any proceedings whether civil or criminal, be relied upon by any party seeking to establish or to negate any liability. In addition, section 334(1) and 335 empowers MAS to impose fines to the approved exchange where MAS finds out that the exchange is liable for contravention of any guidelines. Furthermore, some business and listing rules that further detail SFA requirements are described in a rulebook for each approved exchange. The business and listing

⁽¹⁾ OJ L 201, 27.7.2012, p. 1.

⁽²⁾ Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ L 145, 30.4.2004, p. 1).

rules, as well as any amendment of those rules, must be submitted to MAS prior to their implementation. The SFA provides for penalties where the business or listing rules are not compliant with the requirements set out by MAS. Under the SFA, business rules are deemed to be a binding contract for the approved exchange and its members and therefore must be observed and complied with on an ongoing basis.

- (5) The legally binding requirements applicable to approved exchanges in Singapore deliver substantive results equivalent to those of the requirements laid down in Title III of Directive 2004/39/EC in the following areas: authorisation process, definitional requirements, access to the approved exchange, organisational requirements, requirements for senior management, admission of financial instruments to trading, suspension and removal of instruments from trading, monitoring of compliance with the rules of the approved exchanges and access to clearing and settlement arrangements.
- (6) Under Directive 2004/39/EC, pre- and post-trade transparency requirements apply only to shares admitted to trading on regulated markets. Despite shares can be admitted to trading on approved exchanges in Singapore, the Commission considers that the assessment of those requirements is however not relevant for the purposes of this Decision given that its objective is to verify the equivalence of the legally binding requirements applicable to third-country markets in respect of derivatives contracts that are executed on those markets.
- (7) It should therefore be concluded that the legally binding requirements for approved exchanges in Singapore deliver results equivalent to those of the requirements laid down in Title III of Directive 2004/39/EC.
- (8) The approved exchanges in Singapore are subject to supervision by MAS, a public authority established under section 3 of the Monetary Authority of Singapore Act. MAS is the primary regulator for capital market activities in Singapore. Section 46 of the SFA empowers MAS to issue directions to the approved exchange in relation to specific matters as specified by the SFA to ensure investor protection, the functioning of fair, orderly and transparent markets, the integrity and stability of the capital markets and compliance with any condition or restriction imposed by MAS. MAS has statutory powers to issue legally-binding notices, guidelines, codes, policy statements and practice notes. MAS may impose fines and issue reprimands for the infringement of provisions of the SFA or of its secondary legislation, including notices and directions. MAS may also remove key officers where it considers that doing so is in the interest of the public. Finally, MAS supervises the approved exchange's risk management practices and controls, through on-site and off-site inspections.
- (9) It should therefore be concluded that approved exchanges are subject to effective supervision and enforcement in Singapore on an ongoing basis.
- (10) The conditions laid down in Article 2a of Regulation (EU) No 648/2012 should therefore be considered to be satisfied with respect to approved exchanges in Singapore.
- (11) This Decision is based on the legally binding requirements relating to approved exchanges in Singapore at the time of the adoption of this Decision. The Commission should continue monitoring on a regular basis the evolution of the legal and supervisory arrangements for approved exchanges and the fulfilment of the conditions on the basis of which this Decision has been taken. In particular, the Commission should review this Decision in light of the entry into application of Regulation (EU) No 600/2014 of the European Parliament and of the Council ⁽¹⁾ and Directive 2014/65/EU of the European Parliament and of the Council ⁽²⁾.
- (12) The regular review of the legal and supervisory arrangements applicable to approved exchanges in Singapore is without prejudice to the possibility of the Commission to undertake a specific review at any time where relevant developments make it necessary for the Commission to reassess the equivalence granted by this Decision. Such re-assessment could lead to the repeal of this Decision.
- (13) The measures provided for in this Decision are in accordance with the opinion of the European Securities Committee,

⁽¹⁾ 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 (OJ L 173, 12.6.2014, p. 84).

⁽²⁾ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

HAS ADOPTED THIS DECISION:

Article 1

For the purposes of point (7) of Article 2 of Regulation (EU) No 648/2012, the approved exchanges in Singapore and set out in the Annex shall be considered as equivalent to regulated markets as defined in point (14) of Article 4(1) of Directive 2004/39/EC.

Article 2

This Decision shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels, 15 December 2016.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

Approved exchanges in Singapore referred to in Article 1

- (a) Singapore Exchange Derivatives Trading Limited
- (b) Singapore Exchange Securities Trading Limited
- (c) ICE Futures Singapore.
