

COMMISSION IMPLEMENTING DECISION (EU) 2016/2273**of 15 December 2016****on the equivalence of recognised exchanges in Canada 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 recognised exchanges in Canada 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 authorised as recognised 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 legally binding requirements for recognised exchanges authorised in Canada comprise a three-tiered structure. The first tier consists of provincial and territorial legal legislation which provides for the general requirements that trading venues operators must comply with if they wish to carry on activities in a province or in a territory. More specific and detailed requirements applicable to the recognised exchanges are laid down in National Instruments (NIs), which constitute the second tier. NIs are adopted by the Securities Regulatory Authorities (SRAs) of each province and territory and cover areas such as fair access and transparency, clearing and settlement, reporting and disclosure obligations. Recognition orders constitute the third tier. They are issued for each recognised exchange by the relevant SRA and set out the operational terms and conditions imposed on each recognised exchange. Recognition orders issued by any SRA have the force of law and any breach of the terms and conditions set out there in is a breach of securities law or commodity futures law.

⁽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).

- (5) The legally binding requirements applicable to recognised exchanges in Canada 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 recognised 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 recognised exchange 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. Although shares can be admitted to trading on recognised exchanges authorised in Canada, 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 recognised exchanges authorised in Canada deliver results equivalent to those of the requirements laid down in Title III of Directive 2004/39/EC.
- (8) SRAs are responsible for the regulation and supervision of recognised exchanges authorised within their jurisdiction. Their oversight powers include, inter alia, the authority to make a decision with respect to the trading and manner in which the recognised exchanges carry on their business. In addition, recognised exchanges are required by the terms of their Recognition Order to report suspected breaches of securities law by participants and their clients to the SRAs, and are also required to regularly report on the status of their investigations and disciplinary action to the SRAs. To carry out their supervisory duties, recognised exchanges have dedicated investigation and enforcement staff to monitor trading on an ongoing basis and to perform on-site trade desk reviews of participants. SRAs have also the power to impose sanctions on recognised exchanges for infringements of securities laws (legislative acts, national instruments, rules and recognition orders). The sanctions include fines, reprimands, the revocation of the recognition order or suspension of registration, or the addition of terms and conditions that recognised exchanges have to fulfil in order to comply with securities laws.
- (9) It should therefore be concluded that those financial markets are considered to be subject to effective supervision and enforcement in Canada 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 recognised exchanges authorised in Canada.
- (11) This Decision is based on the legally binding requirements relating to recognised exchanges applicable in Canada at the time of the adoption of this Decision. The Commission should continue to monitor on a regular basis the evolution of the legal and supervisory arrangements for recognised 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 recognised exchanges in Canada 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,

HAS ADOPTED THIS DECISION:

Article 1

For the purposes of point (7) of Article 2 of Regulation (EU) No 648/2012, the recognised exchanges in Canada 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.

⁽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).

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

Recognised exchanges in Canada referred to in Article 1:

- (a) Bourse de Montréal Inc.;
- (b) Canadian Securities Exchange;
- (c) ICE Futures Canada, Inc.;
- (d) NGX Inc.;
- (e) TSX Inc.;
- (f) TSX Venture Inc.;
- (g) Alpha Exchange Inc.;
- (h) Aequitas Neo Exchange Inc.
