

**COMMISSION IMPLEMENTING DECISION****of 30 October 2014****on the equivalence of the regulatory framework of Singapore for central counterparties to the requirements of Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories**

(2014/753/EU)

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 <sup>(1)</sup>, and in particular Article 25(6) thereof,

Whereas:

- (1) The procedure for recognition of central counterparties ('CCPs') established in third countries set out in Article 25 of Regulation (EU) No 648/2012 aims to allow CCPs established and authorised in third countries whose regulatory standards are equivalent to those laid down in that Regulation to provide clearing services to clearing members or trading venues established in the Union. That recognition procedure and the equivalence decision provided for therein thus contribute to the achievement of the overarching aim of Regulation (EU) No 648/2012 to reduce systemic risk by extending the use of safe and sound CCPs to clear over-the-counter ('OTC') derivative contracts, including where those CCPs are established and authorised in a third country.
- (2) In order for a third country legal regime to be considered equivalent to the legal regime of the Union in respect of CCPs, the substantial outcome of the applicable legal and supervisory 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 legal and supervisory arrangements of Singapore ensure that CCPs established and authorised therein do not expose clearing members and trading venues established in the Union to a higher level of risk than the latter could be exposed to by CCPs authorised in the Union and, consequently, do not pose unacceptable levels of systemic risk in the Union.
- (3) On 1 September 2013, the Commission received the technical advice of the European Securities and Markets Authority ('ESMA') on the legal and supervisory arrangements applicable to CCPs authorised in Singapore. The technical advice identified a number of differences between the legally binding requirements applicable, at a jurisdictional level, to CCPs in Singapore and the legally binding requirements applicable to CCPs under Regulation (EU) No 648/2012. This Decision is not only based, however, on a comparative analysis of the legally binding requirements applicable to CCPs in Singapore, but also on an assessment of the outcome of those requirements, and their adequacy to mitigate the risks that clearing members and trading venues established in the Union may be exposed to in a manner considered equivalent to the outcome of the requirements laid down in Regulation (EU) No 648/2012. The significantly lower risks inherent in clearing activities carried out in financial markets that are smaller than the Union financial market should thereby, in particular, be taken into account.
- (4) In accordance with Article 25(6) of Regulation (EU) No 648/2012, three conditions need to be fulfilled in order to determine that the legal and supervisory arrangements of a third country regarding CCPs authorised therein are equivalent to those laid down in that Regulation.
- (5) According to the first condition, CCPs authorised in a third country must comply with legally binding requirements which are equivalent to the requirements laid down in Title IV of Regulation (EU) No 648/2012.
- (6) The legally binding requirements of Singapore for CCPs authorised therein consist of Chapter 289 of the Securities and Futures Act ('SFA') and the Securities and Futures (Clearing Facilities) Regulations 2013 ('SFA Regulations'). The SFA aims at promoting safe and efficient clearing facilities and reducing systemic risk. The SFA

<sup>(1)</sup> OJ L 201, 27.7.2012, p. 1.

Regulations develop and implement the SFA requirements. The SFA introduces an authorisation regime for all systemically important clearing facilities performing the role of CCPs, which have to be authorised by the Monetary Authority of Singapore ('MAS') as Approved Clearing Houses ('ACHs'). Other clearing facilities, including overseas CCPs, are authorised by MAS as Recognised Clearing Houses ('RCHs').

- (7) In January 2013, MAS also issued the Monograph on Supervision of Financial Market Infrastructures ('the Monograph') which sets out standards applicable to CCPs in implementation of the Principles for Financial Market Infrastructures (PFMIs) issued by the Committee on Payment and Settlement Systems <sup>(1)</sup> ('CPSS') and the International Organization of Securities Commissions ('IOSCO') in April 2012. In particular, the Monograph explains how MAS expects ACHs to comply with their obligations under the SFA, and it is taken into account by MAS in assessing compliance with the SFA obligations by ACHs.
- (8) To be authorised as ACHs, clearing houses have to fulfil specific requirements set out in the SFA and in the SFA Regulations. MAS may impose conditions or restrictions for the authorisation of ACHs and may at any time add or vary or revoke any condition or restriction imposed on them. ACHs have to operate clearing facilities safely and effectively, and they have to manage prudently the risks associated with their business and operations. They also must have sufficient financial, human and system resources.
- (9) Moreover, under the SFA, ACHs have to adopt, on an individual basis, internal rules and procedures ensuring the proper and efficient operation of the clearing facility and the proper regulation and supervision of its members. ACHs' internal rules and procedures must contain specific issues prescribed by MAS including requirements related to the risks in the operation of clearing facilities, the handling of defaults and the criteria and conditions to be fulfilled by their members. In this respect, the Monograph is implemented in the internal rules and procedures of ACHs. ACHs' internal rules and procedures, as well as any amendment, have to be submitted to MAS prior to their implementation. MAS can disallow, alter or supplement the internal rules and procedures or any part of the proposed amendment. In addition, under the SFA Regulations, prior approval by MAS is explicitly required for any change to the ACHs' risk management frameworks, including the type of collaterals accepted, the methodologies for collateral valuation and the determination of margins to manage ACHs' risk exposure to its participants, as well as the size of the financial resources available to cover a default of their members (excluding margins held with the ACH). The SFA provides for penalties where ACHs' internal rules and procedures are amended in a way no longer compliant with the requirements set out by MAS. Under the SFA, internal rules and procedures of ACHs are therefore binding upon ACHs.
- (10) The legally binding requirements of Singapore therefore comprise a two-tiered structure. The core requirements for ACHs laid down in the SFA and the SFA Regulations ('the primary rules'), set out the high-level standards with which ACHs must comply in order to obtain authorisation to provide clearing services in Singapore. Those primary rules comprise the first tier of the legally binding requirements in Singapore. In order to prove compliance with the primary rules, ACHs must submit their internal rules and procedures to MAS prior to their implementation and MAS can disallow, alter or supplement them. Those internal rules and procedures comprise the second tier of the legally binding requirements of Singapore, which must provide prescriptive detail regarding the way in which the applicant ACH meets those high-level standards in accordance with the Monograph. Moreover, the internal rules and procedures of ACHs contain additional provisions which complement the primary rules.
- (11) The equivalence assessment of the legal and supervisory arrangements applicable to ACHs should also take account of the risk mitigation outcome that they ensure in terms of the level of risk to which clearing members and trading venues established in the Union are exposed to due to their participation in ACHs. The risk mitigation outcome is determined by both the level of risk inherent in the clearing activities carried out by the CCP concerned which depend on the size of the financial market in which it operates, and the appropriateness of the legal and supervisory arrangements applicable to CCPs to mitigate that level of risk. In order to achieve the same risk mitigation outcome, more stringent risk mitigation requirements are needed for CCPs carrying out their activities in bigger financial markets whose inherent level of risk is higher than for CCPs carrying out their activities in smaller financial markets whose inherent level of risk is lower.

<sup>(1)</sup> As of 1 September 2014 the Committee on Payment and Settlement Systems has changed its name to Committee on Payment and Market Infrastructures ('CPMI').

- (12) The size of the financial markets in which ACHs carry out their clearing activities is significantly smaller than that in which CCPs established in the Union carry out theirs. In particular, over the past three years, the total value of transactions cleared in Singapore represented less than 1 % of the total value of transaction cleared in the Union's Member-States which are part of the G10. Therefore, participation in ACHs exposes clearing members and trading venues established in the Union to significantly lower risks than their participation in CCPs authorised in the Union.
- (13) The legal and supervisory arrangements applicable to ACHs may therefore be considered as equivalent where they are appropriate to mitigate that lower level of risk. The primary rules applicable to ACHs, complemented by their internal rules and procedures which implement the PFMLs, mitigate the lower level of risk existing in Singapore and achieve a risk mitigation outcome equivalent to that pursued by Regulation (EU) No 648/2012.
- (14) The Commission therefore concludes that the legal and supervisory arrangements of Singapore ensure that ACHs authorised therein comply with legally binding requirements which are equivalent to the requirements laid down in Title IV of Regulation (EU) No 648/2012.
- (15) According to the second condition under Article 25(6) of Regulation (EU) No 648/2012, the legal and supervisory arrangements of Singapore in respect of CCPs authorised therein must provide for effective supervision and enforcement of those CCPs on an ongoing basis.
- (16) MAS can issue directions, whether of a general or specific nature, for ensuring the safe and efficient operation of ACHs and, in particular, for ensuring compliance with obligations or requirements under the SFA or with the requirements prescribed by MAS which have to be incorporated in the ACHs' internal rules and procedures. The SFA provides for penalties where the ACH concerned does not comply with the directions issued by MAS. Regarding enforcement of ACHs' internal rules and procedures, MAS may apply to the High Court to issue an order requesting an ACH to comply with, observe, enforce or give effect to its internal rules and procedures. Finally, MAS may revoke the authorisation of ACHs in case of non-compliance with the requirements it prescribes, any condition or restriction imposed on authorisation, any direction issued by MAS under the SFA or any provision of the SFA, among others.
- (17) In addition, ACHs are required under the SFA Regulations to submit to MAS an annual report on how they have discharged their responsibilities under the SFA during the financial year. They also have to submit to MAS the auditors' long form report of the ACH, which has to include the findings and recommendations of the auditors, if any, on the internal controls of the ACH and on any non-compliance of the ACH with any provision of the SFA and any direction issued by MAS under the SFA.
- (18) The Commission therefore concludes that the legal and supervisory arrangements of Singapore in respect of CCPs authorised therein provide for effective supervision and enforcement on an ongoing basis.
- (19) According to the third condition under Article 25(6) of Regulation (EU) No 648/2012, the legal and supervisory arrangements of Singapore must include an effective equivalent system for the recognition of CCPs authorised under third country legal regimes ('third country CCPs').
- (20) Third country CCPs may apply for a RCH authorisation enabling them to provide the same services in Singapore as those they are authorised to provide in the third country.
- (21) Before granting a RCH authorisation, MAS assesses whether the regulatory regime of the third country in which the CCP is authorised is comparable to the legal and supervisory arrangements applied to CCPs established in Singapore, including whether the PFMLs are applied. The establishment of cooperation arrangements between MAS and the relevant foreign supervisory authority is also required to grant an RCH authorisation.
- (22) While noting that the structure of the recognition procedure of the legal regime of Singapore applicable to third country CCPs differs from the procedure laid down in Regulation (EU) No 648/2012, it should nonetheless be considered as providing for an effective equivalent system for the recognition of third country CCPs.

- (23) The conditions laid down in Article 25(6) of Regulation (EU) No 648/2012 can therefore be considered to be met by the legal and supervisory arrangements of Singapore regarding ACHs and those legal and supervisory arrangements should be considered to be equivalent to the requirements laid down in Regulation (EU) No 648/2012. The Commission, informed by ESMA, should continue monitoring the evolution of the Singapore legal and supervisory framework for CCPs and the fulfilment of the conditions on the basis of which this decision has been taken.
- (24) 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 Article 25 of Regulation (EU) No 648/2012, the legal and supervisory arrangements of Singapore consisting of Chapter 289 of the Securities and Futures Act and the Securities and Futures (Clearing Facilities) Regulations 2013 as complemented by the 'Monograph on Supervision of Financial Market Infrastructures' and applicable to Approved Clearing Houses ('ACHs') authorised therein shall be considered to be equivalent to the requirements laid down in Regulation (EU) No 648/2012.

*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, 30 October 2014.

*For the Commission*  
*The President*  
José Manuel BARROSO

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