

COMMISSION IMPLEMENTING DECISION (EU) 2016/2278**of 15 December 2016****on the equivalence of the regulatory framework for central counterparties in the United Arab Emirates in accordance with Regulation (EU) No 648/2012 of the European Parliament and of the Council**

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 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 decisions 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 substantive 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 the United Arab Emirates ('UAE') 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. 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.
- (3) 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.
- (4) 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.
- (5) The legally binding requirements of the UAE for CCPs authorised therein consist of the Regulations ('the regulations') issued by the UAE Securities and Commodities Authority (SCA). The regulations set out the requirements that CCPs have to comply with on an ongoing basis to be able to provide clearing services in the UAE. These comprise of Decision No 157/R of 2005 which defines a Clearing Agency and the SCA Board Decision No 11 of 2015 which set out requirements for CCPs. CCPs established in the UAE have to be authorised by the SCA.
- (6) The SCA has issued a regulation (SCA Board Decision No 11 of 2015) requiring CCPs authorised in the UAE to comply with the Principles for Financial Markets Infrastructures ('PFMIs') issued in April 2012 by the Committee on Payment and Settlement Systems ⁽²⁾ and the International Organization of Securities Commissions.

⁽¹⁾ OJ L 201, 27.7.2012, p. 1.

⁽²⁾ As of 1 September 2014 the Committee on Payment and Settlement Systems has changed its name to Committee on Payment and Market Infrastructures.

- (7) Pursuant to the regulations, CCPs must adopt internal rules and procedures ensuring compliance with all relevant requirements and containing all the relevant aspects related to its function, including the safeguards to manage credit, liquidity and operational risk. Those internal rules and procedures need to be approved by the SCA. Moreover, those internal rules and procedures cannot be amended if the SCA objects to the intended amendments. Moreover, the methodologies for the calculation of the financial resources and the stress test scenarios that a CCP uses are subject to the approval of the SCA.
- (8) The legally binding requirements applicable to CCPs authorised in the UAE therefore comprise a two-tiered structure. The core principles contained in the regulations, particularly SCA Board Decision No 11 of 2015, lay down the high-level standards with which CCPs must comply in order to obtain authorisation to provide clearing services in the UAE. Those regulations comprise the first tier of the legally binding requirements in the UAE. The internal rules and procedures of the CCP comprise the second tier of the legally binding requirements in the UAE. The SCA assesses compliance by the CCP with the regulations and with the PFMI. Once approved by the SCA, the internal rules and procedures become legally binding upon the CCP.
- (9) The equivalence assessment of the legal and supervisory arrangements applicable to CCPs established in the UAE should also take into account 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 when participating in those entities. The risk mitigation outcome is determined by both the level of risk inherent in the clearing activities carried out by the CCP concerned which depends 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 an equivalent risk mitigation outcome, more stringent risk mitigation requirements are necessary for CCPs carrying out their activities in larger 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.
- (10) The financial market in which CCPs authorised in the UAE carry out their clearing activities is significantly smaller than that in which CCPs established in the Union are active. Over the past 3 years, the total value of derivative transactions cleared in the UAE represented less than 1 % of the total value of derivative transactions cleared in the Union. Therefore, participation in CCPs established in the UAE exposes clearing members and trading venues established in the Union to significantly lower risks than their participation in CCPs authorised in the Union.
- (11) The legal and supervisory arrangements applicable to CCPs established in the UAE may therefore be considered as equivalent where they are appropriate to mitigate that lower level of risk. The regulations applicable to CCPs authorised in the UAE, complemented by the internal rules and procedures, which implement the PFMI, mitigate the lower level of risk existing in the UAE and achieve a risk mitigation outcome equivalent to that pursued by Regulation (EU) No 648/2012.
- (12) It should therefore be concluded that the legal and supervisory arrangements of the UAE ensure that CCPs authorised therein comply with legally binding requirements which are equivalent to the requirements laid down in Title IV of Regulation (EU) No 648/2012.
- (13) According to the second condition under Article 25(6) of Regulation (EU) No 648/2012, the legal and supervisory arrangements of the UAE in respect of CCPs authorised therein must provide for effective supervision and enforcement of those CCPs on an ongoing basis.
- (14) The supervision of CCPs authorised in the UAE is carried out by the SCA. The SCA is empowered to conduct ongoing monitoring of CCPs' compliance with the legally binding requirements applicable to them. In this sense, the SCA may request information from CCPs, carry out on-site inspections, issue instructions to remedy infringements or potential infringements of the prudential requirements or practices which are against the well-functioning of the financial markets and order CCPs to set up internal control and risk control measures. The SCA can also remove the management, some members of specific committees and other staff of the CCP.

Further, the SCA is empowered to revoke the CCP's authorisation. The SCA may also impose disciplinary actions, as well as fines, to CCPs for failure to comply with the legally binding requirements applicable to them.

- (15) It should therefore be concluded that CCPs authorised in the UAE are subject to effective supervision and enforcement on an ongoing basis.
- (16) According to the third condition under Article 25(6) of Regulation (EU) No 648/2012, the legal and supervisory arrangements of the UAE must include an effective equivalent system for the recognition of CCPs authorised under third-country legal regimes ('third-country CCPs').
- (17) The SCA may recognise CCPs which are authorised in third countries in which the legal and supervisory arrangements ensure similar outcomes to those ensured by the legal and supervisory arrangements applicable in the UAE. Moreover, third-country CCPs must be subject to effective supervision ensuring compliance with the applicable legal and supervisory arrangements. The conclusion of a memorandum of understanding between the UAE and the competent third-country supervisory authority of the applicant CCP is also required for recognition to be granted.
- (18) It should therefore be concluded that the legal and supervisory arrangements of the UAE provide for an effective equivalent system for the recognition of third-country CCPs.
- (19) This Decision is based on the legally binding requirements relating to CCPs applicable in the UAE at the time of the adoption of this Decision. The Commission, in cooperation with ESMA, should continue monitoring on a regular basis the evolution of the legal and supervisory framework for CCPs in the UAE and the fulfilment of the conditions on the basis of which this decision has been taken.
- (20) The regular review of the legal and supervisory arrangements applicable in the UAE to CCPs authorised therein should be without prejudice to the possibility of the Commission to undertake a specific review at any time outside the general review, where relevant developments make it necessary for the Commission to re-assess the equivalence granted by this Decision. Such re-assessment could lead to the repeal of this Decision.
- (21) 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 paragraph 6 of Article 25 of Regulation (EU) No 648/2012, the legal and supervisory arrangements of the UAE consisting of the Regulations issued by the UAE Securities and Commodities Authority (SCA), as complemented by the application of the Principles for Financial Markets Infrastructures enacted by SCA Board Decision No 11 of 2015, and applicable to CCPs 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, 15 December 2016.

For the Commission
The President
Jean-Claude JUNCKER
