

COMMISSION IMPLEMENTING DECISION (EU) 2016/2277**of 15 December 2016****on the equivalence of the regulatory framework for central counterparties in the Dubai International Financial Centre 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 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 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 Dubai International Financial Centre (hereafter 'the DIFC') 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 DIFC for CCPs authorised therein consist of the Regulatory Law 2004 and the Markets Law 2012 (the DIFC Regulations). These are supplemented by the Dubai Financial Services Authority ('DFSA') Rulebook which contains a Module on Authorised Market Institutions ('AMIs').
- (6) CCPs established in the DIFC must be authorised by the DFSA as AMIs. The present Decision only relates to the regime applicable to AMIs that carry out the authorised financial service of operating a clearing house in the DIFC. To be granted an authorisation for clearing, AMIs have to fulfil specific requirements set out by the DFSA and in the DFSA Rulebook. AMIs must operate clearing facilities safely and effectively and to manage prudently the risks associated with their business and operations. They also have to have sufficient financial, human and system resources.
- (7) The DIFC Regulations fully implement the international standards set out under the Principles for Financial Market Infrastructures ('PFMIs') issued in April 2012 by the Committee on Payment and Settlement Systems ⁽²⁾ ('CPSS') and the International Organization of Securities Commissions ('IOSCO').

⁽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 'CPMI'.

- (8) The DIFC Regulations also require AMIs to adopt internal rules and procedures ensuring compliance with all relevant requirements and that are necessary for the proper regulation of its clearing and settlement facilities. AMI Rule 5.6 requires AMIs' internal rules and procedures to contain specific provisions including default rules. Those internal rules and procedures, as well as any amendments, have to be submitted to DFSA prior to their implementation. DFSA can reject or require amendments to the proposed rules. Under the DIFC Regulations, internal rules of AMIs are legally binding and enforceable against members and other participants.
- (9) The legally binding requirements applicable to AMIs authorised in the DIFC therefore comprise a two-tiered structure. The core principles contained in the DFSA Rulebook and the DIFC Regulations set out the high-level standards which AMIs must comply with in order to obtain authorisation to provide clearing services in the DIFC (together, the 'primary rules'). Those primary rules comprise the first tier of the legally binding requirements in the DIFC. In order to prove compliance with the primary rules, AMI Rule 5.6 on 'Business Rules' requires AMIs to establish and submit their internal rules and procedures to the DFSA for approval prior to their implementation and DFSA can prevent or disallow them. Those internal rules and procedures comprise the second tier of requirements in the DIFC.
- (10) The equivalence assessment of the legal and supervisory arrangements applicable to AMIs in the DIFC 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 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.
- (11) The financial market in which AMIs authorised in the DIFC carry out their clearing activities is significantly smaller than that in which CCPs established in the Union are active. Since 2011 there has been minimal trading or clearing in derivatives. Therefore, participation in CCPs authorised in the DIFC exposes clearing members and trading venues established in the Union to significantly lower risks than their participation in CCPs authorised in the Union.
- (12) The legal and supervisory arrangements applicable to CCPs authorised in the DIFC may therefore be considered as equivalent where they are appropriate to mitigate that lower level of risk. The primary rules applicable to those CCPs, complemented by their internal rules and procedures which require compliance with the PFMI, mitigate the lower level of risk existing in the DIFC and achieve a risk mitigation outcome equivalent to that pursued by Regulation (EU) No 648/2012.
- (13) It should therefore be concluded that the legal and supervisory arrangements of the DIFC ensure that AMIs authorised therein comply with legally binding requirements which are equivalent to the requirements laid down in Title IV of Regulation (EU) No 648/2012.
- (14) According to the second condition under Article 25(6) of Regulation (EU) No 648/2012, the legal and supervisory arrangements of the DIFC in respect of CCPs authorised therein must provide for effective supervision and enforcement of those CCPs on an ongoing basis.
- (15) The DFSA, as the supervisor of AMIs, monitors AMIs in the DIFC to ensure compliance with applicable rules. The DFSA has the comprehensive power to authorise and penalise them including, among other things, the power to cancel the license of AMIs and the power to impose sanctions on them. Day-to-day supervision is conducted by the DFSA. The DFSA adopts a continuous risk management cycle comprising the identification, assessment, prioritisation and mitigation of risks. The Regulatory Law 2004 gives the DFSA strong powers to enforce its laws and rules. The DFSA is empowered to conduct investigations into suspected contraventions of its rules, and has powers to conduct inspections, compulsorily obtain books and records, or require individuals to

participate in interviews under oath or affirmation. The DFSA is able to, among other things, impose financial penalties, issue public censures, and ban persons from undertaking activities on the DIFC.

- (16) It should therefore be concluded that AMIs authorised in the DIFC are subject to effective supervision and enforcement on an ongoing basis.
- (17) According to the third condition under Article 25(6) of Regulation (EU) No 648/2012, the legal and supervisory arrangements of the DIFC must include an effective equivalent system for the recognition of CCPs authorised under third-country legal regimes ('third-country CCPs').
- (18) Third-country CCPs which want to clear derivatives in the DIFC have to apply to the DFSA for recognition. The Recognition Module sets out the criteria and the process for recognition.
- (19) In order for recognition to be granted, the jurisdiction in which the CCP is established must have a sufficiently robust regulatory regime similar to the legal and supervisory arrangements applicable in the DIFC. The conclusion of cooperative arrangements between DIFC and competent third-country authorities is also required before the third-country CCP application is approved.
- (20) It should therefore be concluded that the legal and supervisory arrangements of the DIFC provide for an effective equivalent system for the recognition of third-country CCPs.
- (21) This Decision is based on the legally binding requirements relating to AMIs applicable in the DIFC 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 AMIs and the fulfilment of the conditions on the basis of which this decision has been taken.
- (22) The regular review of the legal and supervisory arrangements applicable in the DIFC 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.
- (23) 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 DIFC consisting of the DIFC Regulations and the DFSA Rulebook, and applicable to Authorised Market Institutions 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
