

**COMMISSION IMPLEMENTING DECISION (EU) 2015/2041****of 13 November 2015****on the equivalence of the regulatory framework of Mexico 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**

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 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 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 Mexico 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) This Decision is not only based on a comparative analysis of the legally binding requirements applicable to CCPs in Mexico, 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 Mexico for CCPs authorised therein consist of the Rules applicable to participants in the derivative contracts market issued by the Bank of Mexico, the Comisión Nacional Bancaria y de Valores (CNBV) and the Secretaría de Hacienda y Crédito Público (SHCP) and the Prudential requirements applicable to participants in the listed derivative contracts market issued by the CNBV (hereinafter referred to together as 'the primary rules'). The primary rules set out the requirements that CCPs have to comply with on an ongoing basis to be able to provide clearing services in Mexico. CCPs established in Mexico have to be authorised by the SHCP, on the basis of the opinion of the CNBV and the Bank of Mexico.

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

- (7) Both the CNBV and the Bank of Mexico have issued policy statements explaining that CCPs authorised in Mexico are required to comply with the Principles for Financial Markets Infrastructures ('PFMIs') issued in April 2012 by the Committee on Payment and Settlement Systems<sup>(1)</sup> and the International Organization of Securities Commissions.
- (8) Pursuant to the primary rules, CCPs must adopt internal rules and procedures 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 SHCP, on the basis of the opinion of the Bank of Mexico and the CNBV. Moreover, those internal rules and procedures cannot be amended if the SHCP, CNBV or the Bank of Mexico, objects to it. The internal rules and procedures of CCPs or their modifications can also be approved subject to certain amendments. The same procedure applies to the approval and modification of the corporate documentation. Moreover, the methodologies for the calculation of the financial resources and the CCP's liquidity plan are subject to the approval of the Bank of Mexico and of an opinion of the CNBV.
- (9) The legally binding requirements in Mexico therefore comprise a two-tiered structure. The core principles for CCPs set out in the primary rules lay down the high-level standards with which CCPs must comply in order to obtain authorisation to provide clearing services in Mexico. The primary rules comprise the first tier of the legally binding requirements in Mexico. In order to prove compliance with the primary rules, CCPs must submit their internal rules and procedures, their corporate documentation, their methodologies for the calculation of the financial resources and the CCP's liquidity plan to the approval of the competent authorities. Those internal rules and procedures, corporate documentation, the liquidity plan and the methodologies for the calculation of the CCP financial resources comprise the second tier of the legally binding requirements in Mexico, which must provide prescriptive detail regarding the way in which the CCP will meet those standards. The CNBV and the Bank of Mexico assess compliance by the CCP with those standards and with the PFMIs. Once approved by the competent authorities, the internal rules and procedures, the corporate documentation, the liquidity plan and the methodologies for the calculation of the CCP financial resources become legally binding upon the CCP.
- (10) The equivalence assessment of the legal and supervisory arrangements applicable to CCPs established in Mexico 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 CCPs established in Mexico. 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 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.
- (11) The size of the financial market in which CCPs authorised in Mexico 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 derivative transactions cleared in Mexico represented less than 1 % of the total value of derivative transactions cleared in the Union. Therefore, participation in CCPs established in Mexico 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 established in Mexico may therefore be considered as equivalent where they are appropriate to mitigate that lower level of risk. The primary rules applicable to CCPs authorised in Mexico, complemented by the internal rules and procedures, the corporate documentation, the liquidity plan and the methodology for the calculation of the CCP's financial resources, which implement the PFMIs, mitigate the lower level of risk existing in Mexico and achieve a risk mitigation outcome equivalent to that pursued by Regulation (EU) No 648/2012.
- (13) The Commission therefore concludes that the legal and supervisory arrangements of Mexico 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.

<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.

- (14) According to the second condition under Article 25(6) of Regulation (EU) No 648/2012, the legal and supervisory arrangements of Mexico in respect of CCPs authorised therein must provide for effective supervision and enforcement of those CCPs on an ongoing basis.
- (15) The supervision of CCPs authorised in Mexico is carried out by the CNBV and the Bank of Mexico within each authority's scope of powers. The CNBV and the Bank of Mexico are empowered to conduct ongoing monitoring of CCPs' compliance with the legally binding requirements applicable to them. In this sense, the CNBV and the Bank of Mexico 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 CNBV can also remove the management, some members of specific committees and other staff of the CCP. Further, the SHCP, on the basis of the opinion of the CNBV and the Bank of Mexico, is empowered to revoke the CCP's authorization. The CNBV and the Bank of Mexico may also impose disciplinary actions, as well as fines, to CCPs for failure to comply with the applicable provisions.
- (16) The Commission therefore concludes that the legal and supervisory arrangements of Mexico in respect of CCPs authorised therein provide for 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 Mexico must include an effective equivalent system for the recognition of CCPs authorised under third country legal regimes ('third-country CCPs').
- (18) The Bank of Mexico may recognise third country CCPs clearing derivatives which are authorised in third countries in which the legal and supervisory arrangements applicable to CCPs authorised therein ensure similar outcomes to those ensured by the legal and supervisory arrangements applicable in Mexico and which comply with the PFMI. 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 Bank of Mexico or the CNBV and the competent third-country supervisory authority of the applicant CCP is also required for recognition to be granted.
- (19) The recognition procedure of the legal regime of Mexico applicable to third country CCPs should therefore be considered as providing for an effective equivalent system for the recognition of third country CCPs.
- (20) The conditions laid down in Article 25(6) of Regulation (EU) No 648/2012 are therefore considered to be met by the legal and supervisory arrangements of Mexico regarding CCPs established therein, 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 should continue monitoring on a regular basis the evolution of the legal and supervisory framework for CCPs in Mexico and the fulfilment of the conditions on the basis of which this decision has been taken.
- (21) The regular review of the legal and supervisory arrangements applicable in Mexico 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 withdrawal of the recognition of equivalence.
- (22) 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 Mexico consisting of the Rules applicable to participants in the derivative contracts market and the Prudential requirements applicable to participants in the listed derivative contracts market, as complemented by the policy statements issued by the CNBV and the Bank of Mexico on the application of the Principles for Financial Markets Infrastructures, and applicable to CCPs authorised therein shall be considered to be equivalent to the requirements laid down in Regulation (EU) No 648/2012.

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*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, 13 November 2015.

*For the Commission*  
*The President*  
Jean-Claude JUNCKER

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