

COMMISSION IMPLEMENTING DECISION (EU) 2016/2269**of 15 December 2016****on the equivalence of the regulatory framework for central counterparties in India 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 India 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) 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 India. The technical advice concludes that the legal and supervisory arrangements applicable, at jurisdictional level, ensure that CCPs authorised in India which have adopted internal policies and procedures regarding several areas that constitute legally binding requirements comply with legally binding requirements which are equivalent to the requirements laid down in Title IV of Regulation (EU) No 648/2012.
- (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 India for CCPs authorised therein which clear corporate securities and financial derivatives and which are under the supervision and oversight of Securities and Exchange Board of India (SEBI) (the SEBI regime), consist of the Securities Contracts (Regulation) Act 1956 (the SCRA) and the Securities Contract (Regulation) (Stock Exchange and Clearing Corporations) Regulations 2012 (the Regulations) which were adopted in June 2012 by SEBI in the exercise of the powers conferred upon it by the SCRA and the

⁽¹⁾ OJ L 201, 27.7.2012, p. 1.

Securities and Exchange Board of India Act (the SEBI Act). SEBI issued a Circular on 4 September 2013 (the Circular) whereby it adopted the Principles for Financial Markets Infrastructures ('PFMIs') issued in April 2012 by the Committee on Payment and Settlement Systems⁽¹⁾ and the International Organization of Securities Commissions and required financial market infrastructures including clearing corporations to adhere to them.

- (7) The SCRA and the Regulations set out an authorisation regime for clearing facilities as recognised clearing corporations ('RCCs') by the Central Government and SEBI. An applicant clearing facility must comply with specific requirements aiming at ensuring a fair operation of the clearing facility and the protection of investors. The Central Government or SEBI may also impose conditions on RCCs. RCCs have to adopt internal rules and procedures which are assessed by the Central Government and SEBI prior to granting a RCC authorisation and which have to be in conformity with the conditions imposed on each RCC. Internal rules and procedures of RCCs can not be amended without prior approval by SEBI. In addition, SEBI can adopt internal rules of RCCs for specific issues or amend the existing internal rules of RCCs, where necessary or expedient. In addition, SEBI may impose penalties for contravention of the internal rules and procedures of RCCs or of any directions issued by SEBI.
- (8) The legally binding requirements applicable to CCPs authorised in India which clear government securities, money market instruments and forex instruments and which fall under the supervision of the Reserve Bank of India (RBI) (the RBI regime) consist of the Payment and Settlement Systems Act, 2007 (PSSA) and the Payment and Settlement Systems Regulations, 2008 (the PSS Regulations). RBI authorises entities to operate a clearing house provided they fulfil the required conditions ('authorised clearing houses'). Moreover, RBI can impose specific conditions on an authorisation, which is valid as long as the specific conditions imposed are fulfilled. Under the PSSA, authorised clearing houses adopt internal rules and procedures and have the duty to operate the clearing house in accordance with them.
- (9) In addition, the PSSA empowers RBI to issue general directions or directions addressed to specific authorised clearing houses. Both types of directions have to be complied with by authorised clearing houses. The RBI published the 'Policy Document for Regulation and Supervision of Financial Market Infrastructures' on 26 July 2013, stating that all authorised clearing houses are required to comply with the PFMIs.
- (10) This Decision relates solely to the equivalence of the legal and supervisory arrangements for RCCs and authorised clearing houses and not to the legal and supervisory arrangements for CCPs which provide clearing services in the commodities market and are regulated and supervised by the Forward Markets Commission.
- (11) The legally binding requirements applicable to CCPs authorised in India therefore comprise a two-tiered structure. The core principles which RCCs and authorised clearing houses must comply with in order to obtain authorisation to provide clearing services in India ('the primary rules') are the following: (a) under the SEBI regime, the core principles for RCCs set out in the SCRA and the Regulations complemented by the Circular of 4 September 2013 which requires compliance with the PFMIs and (b) under the RBI regime, the PSSA and the PSS Regulations, together with the Policy Document for Regulation and Supervision of Financial Market Infrastructures, which requires compliance with the PFMIs. Those primary rules comprise the first tier of the legally binding requirements in India. In order to prove compliance with the primary rules, RCCs have to submit their internal rules and procedures to SEBI for approval. Under the RBI regime, authorised clearing houses have to comply with their internal rules and procedures in the operation of their authorised clearing houses. Those internal rules and procedures comprise the second tier of the legally binding requirements in India, which must provide prescriptive detail regarding the way in which RCCs and authorised clearing houses will meet those standards. Moreover, the internal rules and procedures of RCCs and authorised clearing houses contain additional provisions which complement the primary rules in certain aspects. The internal rules and procedures of RCCs and authorised clearing houses, which implement the PFMIs, are legally binding upon RCCs and authorised clearing houses.
- (12) The equivalence assessment of the legal and supervisory arrangements applicable to RCCs and authorised clearing houses established in India should also take into account the risk mitigation outcome that they ensure in terms

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

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.

- (13) The financial market in which RCCs and authorised clearing houses authorised in India carry out their clearing activities is significantly smaller than that in which CCPs established in the Union are active. Over the past three years, the total value of derivative transactions cleared in India represented less than 1 % of the total value of derivative transactions cleared in the Union. Therefore, participation in RCCs and authorised clearing houses established in India exposes clearing members and trading venues established in the Union to significantly lower risks than their participation in CCPs authorised in the Union.
- (14) The legal and supervisory arrangements applicable to RCCs and authorised clearing houses established in India may therefore be considered as equivalent where they are appropriate to mitigate that lower level of risk. The primary rules applicable to RCCs and authorised clearing houses authorised in India, complemented by the internal rules and procedures which require compliance with the PFMI, mitigate the lower level of risk existing in India and achieve a risk mitigation outcome equivalent to that pursued by Regulation (EU) No 648/2012.
- (15) It should therefore be concluded that the legal and supervisory arrangements of India ensure that RCCs and authorised clearing houses authorised therein comply with legally binding requirements which are equivalent to the requirements laid down in Title IV of Regulation (EU) No 648/2012.
- (16) According to the second condition under Article 25(6) of Regulation (EU) No 648/2012, the legal and supervisory arrangements of India in respect of CCPs authorised therein must provide for effective supervision and enforcement of those CCPs on an ongoing basis.
- (17) The supervision of RCCs is carried out by SEBI. SEBI can adopt internal rules of RCCs for specific issues or amend the existing internal rules of RCCs, having the same effect as if they were adopted or amended by the RCC concerned. Moreover, SEBI can issue directions to RCCs in the interest of the public, or trade or investors or the securities market. RCCs are subject to inspections, enquiries and audits by SEBI and have to provide information regarding its business to SEBI. The SCRA provides for penalties for contravention of the internal rules and procedures of RCCs or of any directions issued by SEBI. Finally, RCC authorisations can be withdrawn by the Central Government or by SEBI in the public interest or in the interest of trade.
- (18) The supervision of authorised clearing houses is carried out by RBI. RBI can request information from authorised clearing houses and has the power to inspect their premises and to make audits. Moreover, RBI can issue directions to authorised clearing houses in specific circumstances, to cease their behaviour and to perform such acts as are considered necessary to remedy the situation. Moreover, penalties are provided for in case of non-compliance with the PSSA provisions and the regulations, orders or directions issued by RBI. Finally, the authorisation to operate an authorised clearing house can be revoked by RBI in case the authorised clearing house contravenes the provisions of the PSSA, the PSS Regulations, the orders or directions issued by RBI or in case of non-compliance with the conditions to which the authorisation is subject.
- (19) It should therefore be concluded that RCCs and authorised clearing houses authorised in India are subject to effective supervision and enforcement on an ongoing basis.
- (20) According to the third condition under Article 25(6) of Regulation (EU) No 648/2012, the legal and supervisory arrangements of India must include an effective equivalent system for the recognition of CCPs authorised under third country legal regimes ('third-country CCPs').

- (21) Third country CCPs may apply for authorisation as an 'authorised clearing house' under the RBI regime, which allows third country CCPs to provide the same clearing services as CCPs established in India. Third country CCPs can be exempted from certain requirements applicable to RCCs and authorised clearing houses in India, provided they comply with the PFMs and a cooperation arrangement is concluded between the RBI and the third country supervisor. The assessment of the application for authorisation can be based on the information provided by the third country supervisor.
- (22) It should therefore be concluded that the legal and supervisory arrangements of India provide for an effective equivalent system for the recognition of third-country CCPs.
- (23) This Decision is based on the legally binding requirements relating to RCCs and authorised clearing houses applicable in India 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 RCCs and authorised clearing houses and the fulfilment of the conditions on the basis of which this decision has been taken.
- (24) The regular review of the legal and supervisory arrangements applicable in India 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.
- (25) The measures provided for in this Decision are in accordance with the opinion of the European Securities Committee,

HAS ADOPTED THIS DECISION:

Article 1

1. For the purposes of paragraph 6 of Article 25 of Regulation (EU) No 648/2012, the legal and supervisory arrangements of India consisting of the Securities Contracts (Regulation) Act 1956, the Securities Contract (Regulation) (Stock Exchange and Clearing Corporations) Regulations 2012 and the Circular of 4 September 2013 and applicable to recognised clearing corporations authorised therein shall be considered to be equivalent to the requirements laid down in Regulation (EU) No 648/2012.

2. For the purposes of paragraph 6 of Article 25 of Regulation (EU) No 648/2012, the legal and supervisory arrangements of India consisting of the Payment and Settlement Systems Act, 2007 and the Payment and Settlement Systems Regulations, 2008, as complemented by the Policy Document for Regulation and Supervision of Financial Market Infrastructures, and applicable to authorised clearing houses 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